Local Project Administration

Certification Course Manual
&
Reference Guide

February 2005

Right of Way

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CHAPTER EIGHT
LOCAL AGENCY ACQUISITION

8-1 LOCAL AGENCY ACQUISITION POLICY

8-1.01 Partnering with Municipalities

Citizens of the State and the community benefit when local officials acquire right of way under agreement with the Maine Department of Transportation. Local officials know the needs and concerns of citizens. Property owners in the path of highway development are more likely to amicably settle property acquisition claims on the basis of fair market value when they are approached by officials they know, who share the same community interests. This enables highway projects to be completed expeditiously and at reasonable cost. It also results in a high degree of citizen satisfaction with the right of way process and the completed project.

Private ownership of property is a basic American right that is protected by the United States and the Maine Constitutions. The taking of property is constitutionally conditioned on public necessity and on payment of just compensation for property that is acquired for a public need. Federal and State legislative enactments provide additional citizen protections and rights. These control the process by which property is acquired and are intended to insure that persons who are affected by acquisition are not disproportionately injured by projects that are intended to benefit the public as a whole.

The Maine Department of Transportation (MDOT) assists municipalities to acquire real property that is needed for highway projects in compliance with Federal and Maine law. This Chapter sets forth basic requirements of law and State policy. It describes and explains the critical steps in the property acquisition process. The objective is to enable local officials to proceed with confidence that they are conforming to all requirements of the law, reducing the amount of time devoted to the research and study of procedures and rules.

This Chapter does not address unique or complex situations. Right of way acquisition is a human endeavor. Circumstances will arise that are not addressed by this brief coverage and that may be outside the experience of officials charged with this function. To address this situation, MDOT assigns a liaison representative to advise and consult on project right of way issues and problems. The assigned MDOT staff will have varied statewide experience and will provide practical advice that conforms to applicable law and regulations. In addition, the MDOT representative will strive for program consistency so that citizens are treated fairly and equitably, without regard to the part of the State they live in or the nature of their occupancy or type of acquisition.

8-1.02 MDOT Services

The Department will perform the following activities with regard to locally administered right of way acquisition projects:

1. Insure that the project is on the Biennial Transportation Improvement Program and that Federal funding is committed, if applicable.

2. Consult with local officials to identify the scope, schedule and cost of right of way acquisition.

3. Prepare an agreement in consultation with local officials defining the State/local project responsibilities.

4. Provide current and continuing advice on the application of State and Federal laws and regulations concerning right of way acquisition to specific project and parcel problems and situations.

5. Provide revisions and updates to regulations, policies, procedures and guidance material.

6. Provide training to local staff that are or will be engaged in right of way acquisition. Training is normally delivered through an agreement with professional organizations including the National Highway Institute, the International Right of Way Association or the American Association of State Highway and Transportation Officials.

7. Monitor the performance of right of way activity in conformity with MDOT's Quality Assurance/Quality Control Program.

8. Provide referrals of qualified and experienced private service providers in right of way functions, including appraisal, negotiations, relocation, legal services and title work.

9. Provide reimbursement for eligible costs based on supported claims that are submitted by the local jurisdiction.

The assigned MDOT liaison representative will perform many of the above services. The municipality shall maintain continuing contact with the representative through the property acquisition phase of the project. Normally, the MDOT representative will meet with the responsible municipal officials at an early stage in the project to review policy questions and the project schedule and to discuss any critical or complex cases.

Although the municipality will assume responsibility to acquire property in compliance with all applicable State and Federal laws, regulations and policy, it is the Department's ultimate responsibility to insure that the acquisition is being accomplished as required. Coordination between the Department and the local agency can be an essential element in providing that

assurance. The Department will closely monitor the acquisition activities of the agency on a regular and ongoing basis.

8-1.03 MDOT/Municipality Agreement

A formal agreement defining the roles and responsibilities of the municipality and the Department will be executed for every project on which a municipality will assume responsibility. This is a comprehensive agreement covering all phases of work, including right of way. The agreement will normally provide for complete assumption by the municipality of all right of way acquisition responsibility. However, specific activities may be reserved for MDOT performance. This may include the relocation of residents who will be displaced as a result of acquisition.

The agreement will state that the standard of performance for right of way work will meet the requirements of the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (as amended)(***Uniform Act***). This Chapter sets forth the basic and minimum requirements of the ***Uniform Act*** for the acquisition of property where no relocation is involved.

The MDOT/Municipality Agreement is an open-draft document that is intended to address the circumstances of specific projects. MDOT staff will consult with local officials in advance concerning the scope and content of the agreement so that it is relevant to the project and meets the needs of both parties.

8-1.04 Applicable Laws and Regulations

The local agency performing property acquisition is subject to the same laws and regulations as if MDOT were the acquiring agency. Following is a brief summary of the legal authorities that control the acquisition of real property for right of way:

1. U.S. and Maine Constitutions. Both require public necessity and payment of just compensation for the taking of private property. Additionally, the U.S. Constitution requires due process when States acquire privately owned property.

2. ***The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** (amended 1987). The ***Uniform Act*** is landmark Federal legislation that applies to all property acquisition for Federal or Federally-funded projects. States, including Maine, have enacted legislation that enables compliance with the Federal law. Maine, through State law, has extended its provisions to State-funded projects.

   The ***Uniform Act*** extends a system of rights and protections to property owners, with corresponding obligations for acquiring agencies. It sets forth a process for establishing value (just compensation) and negotiating with owners to encourage amicable settlements, thereby minimizing having to resort to the courts for condemnation. An important part of the ***Uniform Act*** provides a system of protections and benefits to persons who are displaced as a result of public projects.

The procedural provisions described in this Chapter arise from the requirements of the ***Uniform Act.***

3. 23 ***CFR*** 710. The ***Code of Federal Regulations*** (***CFR***) provides interpretive detail to Federal law and carries the full force and effect of Federal law. The above regulatory reference pertains to real property acquisition policy for highways.

4. 49 ***CFR*** 24. This is the Federal regulation that sets forth policy in implementing the relocation provisions of the ***Uniform Act.***

5. Title 23 ***MRSA*** Part 1. State Highway law contains provisions at Sections 61, 63, 73 through 246, 652 and 653 pertaining to the acquisition of real property and the relocation of displaced persons. Municipalities acquire property under authority of Title 23 Part 3, Chapter 304 (see below). However, this Chapter refers back to Sections 154 through 154E in Part I for purposes of determining damages to real property.

6. Title 23 ***MRSA*** Part 3 Chapter 304. This is the Maine Revised Statute pertaining to local highway law. Chapter 304 defines the acquisition of property for highway purposes.

The Maine Statutes referenced above are fully conforming to the detailed provisions of the ***Uniform Act*** and the implementing regulations in 23 ***CFR*** 710 and 49 ***CFR*** 24.

8-1.05 Transfer of Title to the State of Maine

When a municipality acquires fee title and/or easements on a State or State-aid road, title to the facility will be transferred to the State of Maine when the project is complete. The process for the transfer will be determined in consultation with the Project Development Bureau Survey and Mapping Unit.

8-1.06 Quality Assurance

The Department is committed to continuously improve the quality, efficiency and effectiveness of its programs and services. In partnering with MDOT, a municipality or local agency assumes a role in quality assurance. MDOT's concept of quality is based on the premise that every person involved in the process at any level has a responsibility for advancing quality. Quality advancement is a responsibility of each employee. It is not exclusively a management, supervisory or audit function. The following activities are appropriate quality advancement measures that can be undertaken by the municipality performing real property acquisition:

1. Perform a second-party internal review of all documents before they are delivered to the property owner. This includes appraisals, agreements, and instruments of conveyance, offer letters, etc.

2. Provide relevant training to agency personnel who are engaged in specialized right of way activity (e.g., appraisal, negotiations, titles, relocation).

3. Perform quality spot checks of completed work concurrent with any ongoing project acquisition activity.

4. Perform peer reviews of work activity when there is more than 1 staff peraon involved in property acquisition for right of way.

5. Conduct phone or mail surveys of property owners following acquisition.

6. Develop internal procedures or policy to apply to specific recurring situations or circumstances in order to insure consistency and equitable treatment.

7. Perform joint project reviews between MDOT and local agency management staff.

The above are examples, but not an exhaustive list, of quality assurance actions. Other measures may be appropriate and effective depending on agency staffing, organization and the project. Specific quality assurance measures may be suggested by MDOT and incorporated into the MDOT/Municipality Agreement.

The agency quality assurance activities do not replace audits and reviews that are performed by State, Federal or local audit authorities. The Department has responsibility under 23 ***CFR*** 710.203(c) to monitor property acquisition activities conducted by political subdivisions to ascertain that right of way is acquired in accordance with the provisions of State and Federal laws and as required by Federal Highway Administration directives.

8-2 ACQUISITION PROCESS REQUIREMENTS

The procedural items discussed in this Section are basic requirements of the ***Uniform Act*** in the process of acquiring real property for highway right of way. They are presented with minimum detail in order to afford flexibility to municipalities to adapt their process to their organization structure and the nature of the project. Additional information can be secured from the other chapters of this *Manual* that pertain to individual acquisition functions. Also, information and advice will be available from the MDOT Right of Way liaison representative.

8-2.01 Title Investigation and Certification

Title investigations and certifications may be performed by municipality legal staff, or may be contracted to private attorneys.

Municipalities will follow the standards established by the Maine State Bar Association for title examinations, including treatment of clouds or defects in title. Exceptions to these standards will be acceptable only on approval of the MDOT Office of Legal Services.

As soon as the right of way acquisition needs are identified for a project, acquisition to date titles will be prepared for all properties from which either permanent or temporary rights will be acquired. This work will enable detailed plotting of property lines and ownership information on plans.

Detailed guidance on title examinations for highway acquisition, including length of title search history for different types of takings is provided in Chapter 2. Section 2-4.03 provides guidelines for handling clearance of mortgages and other liens on property. On property acquired by deed, liens will be extinguished by securing releases, or the lien holder will named as payee on the check for settlement in accord with criteria for different types of acquisitions defined in Section 2-4.03.

A final rundown of title will be performed on all acquisitions immediately prior to recording the acquisition documents. The municipality will secure an attorney's certification that the municipality has secured the required necessary rights to construct the project as designed, and that all applicable Federal and State requirements governing these acquisitions are satisfied. A final project certification will be made using the format of the MDOT Certification statement referenced in Chapter 1, Section 2.02(b).

8-2.02 Right of Way Mapping

The function of right of way mapping includes gathering and managing real property information and highway system information, and preparing the right of way plans and acquisition documents necessary to acquire property for highway projects. This section provides a brief overview of the mapping function. Detailed requirements for mapping are contained in Chapter 2.

The initial step in mapping is gathering data on ownership and improvements on each parcel of land the project is likely to affect. Mapping personnel then determine property rights underlying the existing or proposed transportation facility. Mappers will translate the information into preliminary right of way maps that show the existing limit of the right of way or other MDOT ownership. Mappers later prepare final right of way plans that document the new right of way limits of the project, basic design features including entrances and slopes, and the areas and types of acquisitions needed for the project. The final right of way plan serves as the basis for the parcel descriptions included in the property acquisition documents. A municipality will need to provide maps and property plats for the condemnation cases.

Municipalities may contract for performance of mapping functions. Guidance for the mapping process is contained in Chapter 2. The MDOT Program Services Mapping unit can provide detailed advice on mapping specifications or questions on specific project situations.

8-2.03 Determination of Just Compensation

Just compensation is the measurement of damages resulting from a taking under power of eminent domain. The agency's estimate of just compensation is determined by means of real estate appraisal, which are independently reviewed by a qualified review appraiser.

Independent contract appraisers in Maine are certified or licensed by the Maine Department of Professional and Financial Regulation. MDOT maintains an Appraisal Register, which is a current listing of consultant appraisers who are properly licensed or certified and are otherwise qualified by experience and performance to appraise property to be acquired for highway right of way. MDOT recommends that a municipality contract with an appraiser on the Appraisal Register.

When using an independent appraiser, consider the following:

1. Information Provided to the Appraiser. It is critical that the appraiser be provided with sufficient information to value the property rights to be acquired. The following should be provided:

    a. Name, address and phone numbers of the owner(s);
    b. Preliminary title information indicating current ownership and recent sales;
    c. Description of the property rights to be appraised; and
    d. Plan sheet indicating property lines and taking, including grade changes and mitigation measures (e.g., driveway restorations or landscaping).

2. Provide Owner the Opportunity to Accompany Appraiser. The appraiser must provide an opportunity to the property owner to accompany the appraiser in an inspection of the property. This is a basic requirement of the ***Uniform Act*** and cannot be waived. The appraiser should document efforts to contact the owner as well as provide the owner's response to the offer to accompany the appraiser.

3. Appraisal Format and Number of Appraisals. When developing the appraisal, consider the following:

   a. The Department uses a Short Format Appraisal to value property when there are no damages or special benefits to the remainder and the highest and best use of the remaining property is not changed. This is discussed in Section 4-2.04.

   b. The Department may waive a formal appraisal of uncomplicated acquisitions where the value of the taking does not exceed $5,000. In this instance, just compensation is determined by a qualified person, not necessarily an appraiser, through a simplified valuation process based on direct comparison with available market sales information. In order for an assessor to be deemed qualified, they must be either a Certified Maine Assessor or a Certified Assessment Technician. This process is fully described in Chapter 3. It should be noted that the administrative acquisition process is used only when settlement can be reached on this basis after explaining the process to the owner.

   c. Some acquisitions will require more than one appraisal to be performed. Circumstances for a second appraisal include the property or the acquisition being of high value or uncertainty existing about the highest and best use of the property either before or after the acquisition.

   d. Before executing an agreement, the MDOT liaison representative will review the expected property acquisitions with local officials and jointly agree as to the proper appraisal format to be used and acquisitions in which more than 1 appraisal is appropriate.

4. Appraisal Review to Determine Value. The fair market value offer that will be presented to the property owner as just compensation is determined by a formal review of the appraisal(s) secured for the property. The appraisal review function may be performed by a qualified agency representative or by a licensed or certified contract appraiser who is not associated with the person who performed the appraisals. The appraisal review will include a check of the factual information and computations in the appraisal. It will also conclude to a fair market value for the acquisition based on an evaluation of support and reasonableness of the appraisal value conclusion. The review appraiser is responsible to secure any needed appraisal corrections or additional documentation. The appraisal review process is discussed in Section 4-5.

5. Written Statement of and Basis for Amount Established as Just Compensation. A written offer of fair market value must be prepared for presentation to the owner, accompanied by a summary statement of the basis for the amount the agency has established as just compensation. The summary must provide the following

information to enable the owner to make a reasonable judgment concerning the amount of the offer:

a. A description and location identification of the real property and the interest in the real property being acquired;

b. Identification of buildings, structures and other improvements, including removable building equipment and trade fixtures, considered to be part of the real property to be acquired; and

c. The amount established as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and for damages to the remaining property must be stated separately.

8-2.04 Negotiations with the Owner

Agencies that acquire private property for public projects are aware of the need to be sensitive to property owner concerns as well as their rights under the Maine and the U.S. Constitution and laws. Most owners are willing sellers. However, the process is involuntary in that the owner does not have the option not to sell. Therefore, it is important to negotiate for acquisition with a high degree of preparation, knowledge about the public need (i.e., the project) and professionalism in contacts with owners. Before negotiations can begin, the municipality must ensure that the NEPA process is complete and that the appropriate documentations are in place.

The agency representative should present the written offer of fair market value in person, explain the project and the need for acquisition, and address any owner questions about the offer and the valuation process. In addition, the representative should discuss the project schedule and any effects of the acquisition or the project on remaining property. Sufficient time should be provided to the owner to consider the offer and to consult with others concerning the acquisition and the reasonableness of the offer. This may require follow-up contacts. The agency has a responsibility to make every effort to acquire property expeditiously by negotiations.

The agency-determined fair market value is the basis for negotiations, but the offer should not be considered a "take it or leave it" alternative. Information provided by the owner may be cause to revise the offer, for instance, if an important element of value were omitted from the appraisal or the acquisition was not properly described in the appraisal. Also, the agency has authority to administratively increase the offer amount if this would promote a settlement that would be in the overall public interest. Reasons for administrative settlement need not be based on valuation, but might consider other factors including condemnation costs, need for expeditious settlement or the risk of a court award that is significantly greater than the agency determination of value.

Any administrative settlement offer amount that is above the established fair market value must be fully explained in the file by the authorizing official, with an explanation as to how the offer is in the public interest. All negotiations contacts with owners should be documented on a diary log that states the date of contact, the parties contacted and a summary of the discussion. Chapter 5 provides a more detailed discussion of the negotiations process.

8-2.05 Tenant-Owned Improvements

The property acquired may include buildings, structures or other real property improvements that are owned by a tenant rather than the landowner. The tenant may have a lease that specifies that improvements be removed at termination of the lease. Tenant-owned improvements are more likely to be encountered on commercial use property. Examples include trade fixtures in a retail store or a panelized walk-in cooler for a restaurant. A tenant-owned improvement on a residential property might be an outbuilding (e.g., a storage shed) or a swimming pool.

Property that would be considered real property if it is owned by the landowner is also considered real property for acquisition purposes. The agency must acquire interest in tenant-owned improvements that are located on property that is acquired for the project. A separate offer of the value of the improvements must be made to the tenant owner, but only if the landowner first disclaims any interest in the improvements. If the landowner refuses to disclaim interest, the tenant is advised of this fact. The acquisition payment to the landowner will include the value of the improvements. Disputed ownership will then be a matter to be resolved between the landowner and the tenant.

The value of tenant-owned improvements will be determined as the greater of the amount that the improvement contributes to the fair market value of the whole property, or the value for removal, which is the same as salvage value.

8-2.06 Uneconomic Remnants

An uneconomic remnant is a remainder property after acquisition that the acquiring agency determines has little or no utility or value to the owner. The ***Uniform Act*** requires that the agency offer to purchase uneconomic remnants. This requirement is based on the reasoning that an owner should not be burdened by having to maintain and incur taxes and other costs for a property remnant that is created by the public taking that is of no value or use to the owner. The decision to sell the uneconomic remnant is voluntary on the part of the owner.

8-2.07 Donations

The acquiring agency may accept donation of the property or any part of the compensation that would be due to the owner for the acquisition. However, in requesting or accepting a donation, the agency must inform the owner of the right to have the agency appraise the property and be offered full fair market value. If the motivation for donation is a tax reduction, the owner should

be advised that the Internal Revenue Service requires an independent third-party appraisal to support any deduction from taxes. The agency may, at its election, reimburse the owner's cost for an appraisal. The selection of an appraiser and compliance with tax law requirements is the property owner's responsibility.

It is important that the agency not take any action that could be perceived as coercive of the owner to donate property. An example of a coercive act would be to tell an owner: "All your neighbors have agreed to donate. They are going to be unhappy to know this project is delayed because of your refusal to donate".

8-2.08 Exercise of Eminent Domain

The municipality acquiring real property should make every reasonable effort to settle amicably by negotiations as described above. If municipal officials determine after sufficient contacts that settlement based on negotiations is not feasible, and the project schedule requires immediate taking of property interests, title should be acquired by filing a condemnation order in the manner specified in 23 ***MRSA*** Chapter 304, Section 3023. The municipality will issue a check in the full amount of determined damages, fair market value, for delivery with the service of record copy of the condemnation order. Service on any one of multiple owners will be considered service on all owners. Title will pass to the municipality on service of the order of condemnation and check, or recordation of the deed or certificate as specified in 23 ***MRSA*** Section 3024, whichever occurs first.

A property owner who is not satisfied with the determination of damages that are awarded in the process of eminent domain as described above may appeal to the State Supreme Court in the county where the property lies. The owner's appeal to the Superior Court must be made within 60 days after the day of taking as specified in 23 ***MRSA*** Section 3029.

8-2.09 Payment for Property Before Being Required to Surrender Possession

The ***Uniform Act*** requires that no owner be required to surrender possession of real property before the acquiring agency pays the agreed purchase price. This requirement is served in condemnation by the process described in Section 8-2.08. In negotiated settlement, the municipality will deliver a payment check to the owner in the full amount of the agreed settlement before the agency takes physical possession of the property or requires the owner to vacate the property.

8-2.10 Payment for Expenses Incidental to the Transfer of Title

The acquiring municipality will pay actual and reasonable costs of transferring the title to the acquired property, including:

1. Recording fees, transfer taxes and similar expenses, if any, that are incidental to conveying the property to the municipality;

2. Penalty costs for prepayment of any preexisting recorded mortgage encumbering the real property; and

3. The pro rata share of real property taxes paid by the owner for the period after the date of vesting title or the effective date of possession of the property, whichever is earlier.

8-2.11 Written Advance Notice to Vacate Occupied Property

No person who is lawfully occupying real property will be required to move from a dwelling or to move a business or farm operation without at least 90 days' written notice from the acquiring agency of the date by which the move is required. The occupant should have a reasonable length of time to find other adequate facilities (e.g., housing or replacement business site) and to effect an orderly relocation.

The timing, content and delivery of a notice to vacate are determined by the Relocation Program procedures. If issuance of a formal notice to vacate is required, the municipality should consult with the MDOT liaison representative to insure that the notice complies with all regulatory requirements.

Less than 90 days' advance written notice is permitted if continued occupancy of the property would constitute a danger to the person's health or safety. The determination and circumstances must be included in the project files.

8-2.12 Relocation of Residents or Businesses

The municipality may pay for the relocation of minor personal property items from the acquisition area to remaining property as a direct reimbursement claim based on the owner's actual and reasonable cost.

The relocation of residences, businesses or farms must be undertaken in strict compliance with Title 3 of the ***Uniform Act*** and Chapter 6 of this *Manual*. Relocation is a highly specialized activity. MDOT recommends that the municipality consult with the assigned liaison representative at the earliest time that a possible residential or business displacement is identified. The circumstances will be reviewed and determination made as to whether the relocation function will be performed by the municipality, contracted to a qualified private party or performed by MDOT staff.

It is important to know that property acquisitions that involve relocation will require significantly greater lead time than those acquisitions involving land only. There is an absolute requirement to make comparable replacement housing available to each displaced person or household and to provide at least 90 days' notice after a displacee is advised of the availability of replacement housing. The agency must schedule the project to accommodate the relocation time requirements.

8-3 PROPERTY MANAGEMENT

The municipality is responsible for maintenance, security and management of acquired land improvements after acquisition. This includes the following items:

1. Rodent Control. Properties should be inspected after acquisition for rodents and other hazardous conditions. If rodent infestations are found, the municipality must take removal actions to preclude migration to nearby properties. This should be performed before the demolition of any improvements.

2. Hazardous Substances. Buildings containing asbestos or other hazardous materials must be demolished in compliance with State and Federal criteria for these conditions. See Chapter 7 for further information.

3. Security and Safety. The municipality is responsible to maintain safe conditions at acquired sites. This includes preventing blighting influences to adjacent property by removing accumulations of trash and taking measures to control vandalism and dumping. Buildings should be secured appropriately, including boarding or fencing if necessary. Particular attention must be given to removing conditions that could attract and be hazardous to children.

4. Demolition or Removal of Structures. Structures may be sold for removal from the site or be demolished. If structures are sold, the municipality must use a fair and open process for selecting a buyer, require a cash security deposit or bond to guarantee performance, and require insurance to indemnify the municipality and the State from any liability.

   The municipality may demolish structures with its own forces or contract for demolition prior to construction, or removal may be included as a work item in the highway construction contract.

   The owner of acquired land may retain ownership of structures for removal to remaining property. This should be arranged during the negotiations for the property, with appropriate adjustment to the fair market value to reflect the retention value of the structures.

5. Rental of Acquired Property. Normally, the construction schedule will preclude the rental of acquired property prior to project construction. If the project is delayed or property is acquired significantly in advance of project need, the municipality may allow occupancy for public or private use. If rented, the amount charged may not exceed what is appropriate for short-term occupancy in the area. The rental or use and occupancy agreement should specify that occupancy after agency acquisition does not create any right or obligation by the municipality or MDOT for relocation benefits of any kind.

Any revenues that are generated from the rental of property or the sale of improvements will be applied to reduce the net cost of the project.

8-4 PARCEL AND PROJECT RECORDS AND REPORTS

8-4.01 Parcel and Project Files

The acquiring agency will keep a separate file for each real property acquisition and a file for the right of way project as a whole. The records will be sufficient to demonstrate compliance with applicable laws and regulations. The following will be included in the parcel and project files:

1. Right of way map or plan showing the right of way acquired, including parcel numbers property lines, area acquired and structure improvements and fences;
2. Project plans and property plats, sketches or descriptions;
3. Property ownership information, including title reports;
4. Appraisal Reports and related assignment and contract documents;
5. Statement of determination of fair market value;
6. Offer letters to property owners;
7. Negotiations logs or contact sheets;
8. Correspondence with property owners and MDOT;
9. Settlement agreements and contracts and justifications for administrative settlements;
10. Condemnation documents and filings;
11. Credits for sale or rental of property; and
12. Documents relating to property management or the rental or sale of property and structures.

8-4.02 Project Summary Records

Project summary data should be maintained as agreed in consultation with MDOT for each project. This may include a summary sheet showing key dates for each parcel, indicating the following:

1. Appraisal assignment,
2. Date the appraisal was received,
3. Date and amount of the fair market value that was established,
4. Date a written offer was presented to the owner and negotiations were initiated,

5. Date and amount of the settlement,
6. Date condemnation was filed,
7. Date the title was transferred,
8. Costs of excess land and any uneconomic remnants acquired,
9. Incidental expenses by parcel, and
10. Cost of construction items performed for mitigation of damages.

The specific project summary data will vary with the type of project and character of work to be performed. Projects with relocation may require a different data set.

MDOT and the municipality are subject to audit by State authorities, the FHWA and the U.S. Department of Transportation. Beyond the information noted above, sufficient documentation should be retained in files to track the origin and basis for any costs that are charged to the project as specified in 49 ***CFR*** Section 18.42.

The Department provides summary information on acquisition and relocation annually to the FHWA in order to carry out national program reporting responsibilities. The municipality will provide contributing information on projects under its responsibility.

8-4.03 Acquisition Policy Resources

The following Right of Way Program information resources will be provided to the municipality on initial assignment of responsibility for right of way project acquisition:

1. The MDOT *Right of Way Manual*;
2. The FHWA ***Real Estate Acquisition Guide for Public Agencies***;
3. ***Maine Revised Statutes*** Annotated, ***MRSA*** Title 23;
4. U.S. ***Code of Federal Regulations***, 23 ***CFR*** 710–712, and 49 ***CFR*** 24; and
5. Policy memoranda and guidance issued by MDOT and the FHWA .

8-4.04 Confidentiality and Retention of Records

The municipality should insure that all parcel and project files relating to appraisals and negotiations are secure and that only those persons qualified to access the files are allowed to view them. These records are not available for public information except as noted below and their integrity should be carefully maintained. Access to confidential records should be restricted to officials of the municipality, MDOT, the State Auditor and the Federal Highway Administration. Because these data provide the documented support for the establishment and payment of just compensation required by law, they should be secured in a safe area with backup records developed as considered necessary. This is especially important if the data are maintained in computerized form.

Project and parcel records relating to appraisals and negotiations will be open to public inspection 9 months following the completion date of the project. Records relating to claims appealed to the Superior Court will be open to public inspection following the award of the Court.

Notwithstanding public availability of appraisals and negotiations records above, parcel records may contain information of a personal nature relating to claimant income, assets, tax information etc. This information may be protected from disclosure under privacy laws. Officials should consult the local agency or MDOT Chief Legal Counsel before making records available.

The municipality will retain records in accordance with the MDOT records retention policy as provided in the MDOT/Municipality Agreement.

Real Estate Acquisition Guide For Local Public Agencies

U.S. Department of Transportation
Federal Highway Administration

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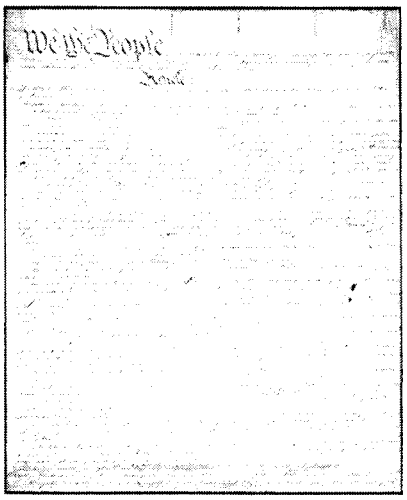
TABLE OF CONTENTS

I. INTRODUCTION

This guide is intended to serve as a basic reference for local public agencies and others who receive Federal-aid highway funds for projects involving the acquisition of real property. Typically, the Federal Highway Administration (FHWA) provides funds to State governments who carry out highway projects. These funds are used to support activities related to building, improving, and maintaining designated public roads. In some circumstances, the States pass on the funds to local governments or private entities. Eligibility to receive Federal funds depends upon compliance with Federal laws, regulations, and policies. State and local governments often have additional requirements that apply.



One set of project activities eligible for Federal-aid funding involves the acquisition of real property and the relocation of residents, businesses, and others. Concern for fair and equitable treatment in acquiring private property for public purposes goes back to the beginnings of the United States. The founding fathers placed a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment:

> **"No person shall. . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."**

The 14th Amendment to the Constitution extends to States the requirement of following due process when they acquire privately owned property.

There are several reasons that the Federal Government retains a deep interest in the acquisition of real property for federally assisted projects. The most important is ensuring that the Fifth Amendment mandates of due process and just compensation are met when property owners are affected by Federal-aid projects. Another is the goal of acquiring property without delaying the project for which it is needed. Finally, the Federal government is concerned that Federal tax dollars used to fund public improvement projects are spent in an appropriate fashion.

PRIMARY LAW FOR ACQUISITION AND RELOCATION ACTIVITIES

Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on Federal or federally assisted projects and programs.

Other Federal, State and local laws also govern public project and program activities. The requirements of other Federal laws that affect the process of acquiring private property for public purposes are discussed, at least minimally. However, our primary emphasis in this document will be the Uniform Act and its requirements.

Federal real estate acquisition statutes and regulations include:

<u>United States Code</u>
- Title 23 — Highways
- Title 42, CHAPTER 61 — Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
- Title 49 — Transportation

<u>Code of Federal Regulations</u>
- 23 Part 710
- 49 Part 24

II. THE UNIFORM ACT AND THE GOVERNMENT-WIDE REGULATION

What Does the Uniform Act Do?

The Uniform Act applies to all projects receiving Federal funds or Federal financial assistance where real property is acquired or persons are displaced as a result of acquisition, demolition, or rehabilitation. Anyone connected with the process of acquiring real property for federally assisted projects should be familiar with its provisions. A copy of the Uniform Act (and its implementing regulations) may be found in the Appendix of this guide.

The Uniform Act provides benefits and protection for persons whose real property is acquired or who are displaced from acquired property because of a project or program that uses Federal funds or receives Federal financial assistance. The Constitution requires payment of just compensation for real property which is acquired and, when a project results in displacement, the Uniform Act requires services and payments be provided for displaced persons. A displaced person may be an individual, family, business, farm, or non-profit organization.

When Does the Uniform Act Apply?

The Uniform Act applies when Federal dollars are utilized in any phase of a project. The Uniform Act applies even when Federal dollars are not used specifically for property acquisition or relocation activities, but are used elsewhere in the project, such as in planning, environmental assessments or construction. The Uniform Act also applies to acquisitions by private as well as public entities when the acquisition is for a Federal or federally-assisted project.

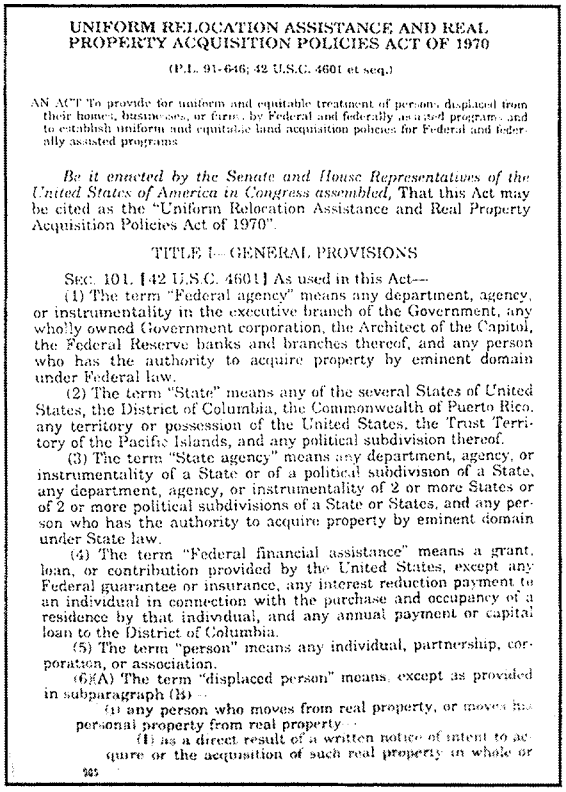
You should advise property owners and occupants of their rights under the Uniform Act by means of a written statement or brochure. You may obtain electronic versions of the Federal Highway Administration's brochures on Acquisition, Relocation and Appraisal from our website at:

http://www.fhwa.dot.gov/realestate/index.htm

You must make sure that displaced persons receive all of the benefits and protections to which they are entitled. A fuller discussion of the Uniform Act's benefits and protections will be found in the sections and chapters which follow.

You should work closely with your State Transportation Department (STD) during the entire acquisition process, both to expedite acquisition and to assure that all Federal and State requirements are met. Typically, the STD will have an experienced real estate staff which can serve as a valuable resource to your agency. In addition, STDs may have programs to assist local governments in complying with federally assisted project requirements. These programs may include providing technical assistance and training for local acquiring agency personnel as well as samples of informational brochures, form letters, and claim forms. Some STDs also have designated a staff member as a local public agency coordinator.

The Uniform Act



UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(P.L. 91-646; 42 U.S.C. 4601 et seq.)

AN ACT To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I—GENERAL PROVISIONS

SEC. 101. [42 U.S.C. 4601] As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State" means any of the several States of United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or

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The Uniform Act is divided into three major sections or titles. Title I, "General Provisions," primarily covers definitions.

Title II, "Uniform Relocation Assistance" contains provisions relating to the displacement of persons or businesses by Federal or federally assisted programs or projects. An overview of the relocation requirements are provided in Chapter VII, Relocation Assistance. However, relocation under the Uniform Act is a specialized and complex subject. **If you do not have staff qualified to administer a relocation program, you should seek assistance from your STD to insure that displaced persons are provided all appropriate assistance and payments. Qualified relocation consultants also may provide these services.**

Title III, "Uniform Real Property Acquisition Policy" pertains to the acquisition of real property for Federal or federally assisted programs or projects. An overview of acquisition requirements is provided in Chapter VI, Acquisition. One of the purposes of Title III is to encourage and expedite the acquisition of real property through negotiation with property owners, thereby avoiding litigation and relieving congestion in the courts. Other purposes include assuring consistent treatment for property owners in Federal programs and promoting public confidence in Federal land acquisition practices.

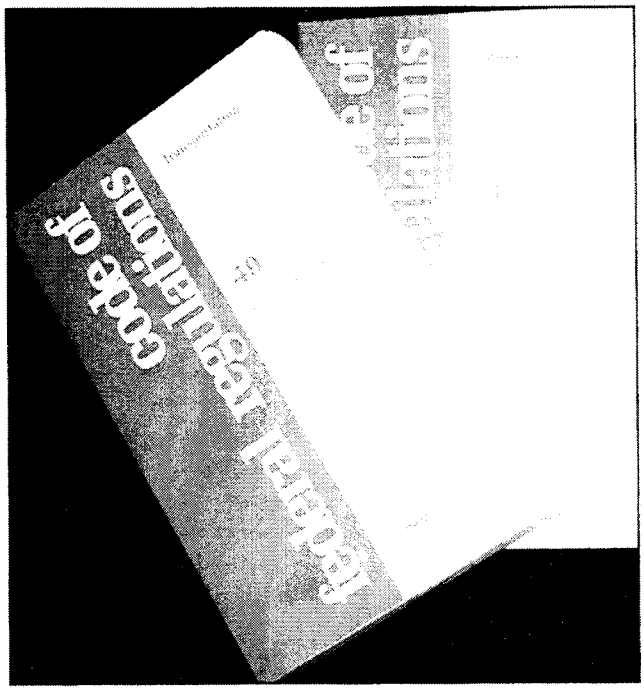
Each State has provided assurances that they can fully comply with the Uniform Act. Local acquiring agencies must certify that they have followed their State's Uniform Act assurances when acquiring real property.

> Note: **Failure to comply with the provisions of the Uniform Act will result in denial of Federal participation in project costs.**

Eminent Domain and Condemnation

When amicable agreement cannot be reached through negotiations, the governmental power of eminent domain (condemnation) may be utilized to acquire real property. When eminent domain is utilized, the judicial system becomes the forum for establishing just compensation. The court will determine just compensation in the context of State eminent domain statutes and relevant case law. Consequently, what is compensable varies among the States. A number of States have adopted laws providing property owners compensation for conditions such as loss of business, loss of good will, noise, increased travel distance, and owner litigation costs. **You should consult with your STD for advice as to what is or is not compensable under your State law.**

49 Code of Federal Regulations (CFR) Part 24 – The Government-Wide Regulation



http://www.fhwa.dot.gov/realestate/index.htm

The basic regulation governing acquisition and relocation activities on all Federal and federally assisted programs and projects is 49 CFR Part 24, the government-wide Uniform Act regulation (a copy of 49 CFR Part 24 is in the Appendix). FHWA is the lead agency for the Uniform Act and is responsible for the promulgation and maintenance of the government-wide regulation.

In addition to the government-wide regulation, Federal agencies adopt program regulations which govern acquisition, relocation, and other matters specific to their programs. For example, agencies receiving funds from the FHWA, directly or through an STD, are subject to the regulations found in 23 CFR, which is entitled "Highways." These regulations are found at various locations in 23 CFR, mostly in Part 710. These regulations address highway-related issues not covered by the Uniform Act. A copy of 23 CFR, Part 710 is in the Appendix.

The acquisition of private property for public purposes is a complex matter governed by a number of laws, regulations, and policies. Familiarity with these requirements is essential for a successful acquisition program.

Federal-Aid Participation (funding)

Because of the variations in eminent domain laws among the States, it is extremely important that agencies and individuals dealing with the acquisition of private property for federally assisted projects be familiar with applicable State law and be aware of which expenditures are reimbursable under the Federal-aid program. An overview of the acquisition process is provided in Chapter VI, Acquisition.

In the past, FHWA regulations have limited Federal participation in acquisition payments to what was considered generally compensable under eminent domain. The FHWA changed this standard to allow reimbursement in accordance with the requirements of your State law.

III. PROJECT DEVELOPMENT

In the preceding chapters, we discussed the purpose of this guide as well as the Constitutional, statutory (Uniform Act, found at 42 U.S.C. 4601), and regulatory frameworks (23 and 49 CFR) in which the Federal-aid highway program operates. This chapter will provide an overview of the project development process, following which we will examine specific elements of the right-of-way function in more detail.

General

The project development process begins with the identification of a transportation need. The need may result from factors as diverse as planned or anticipated growth, obsolescence of the present roadway, or a change in the land use of the area surrounding a highway. In any case, appropriate authorities determine that addressing the need merits further study.

Determining the feasibility of a project is a complex process. It requires input from the public as well as many different transportation professionals (planners, engineers, right-of-way specialists, environmental specialists, and others). The process considers the potential environmental impact of the project, examines the agency's ability to financially support the project, and determines the priority which the project should be assigned relative to other planned or potential projects. Due to the many elements in the project development process and because each project is unique, the process may vary somewhat from project to project and from agency to agency.

The first component of the project development process is planning, followed by a group of activities comprising the second component of the project development process - which we will refer to as the "typical project development cycle."

Planning

The transportation planning process is an ongoing, ever-evolving process. Project level planning begins at the conception of a project, continues to its completion, and is an integral part of the project development process. Two major items which require early consideration are the transportation planning process as it pertains to Federally funded projects, and compliance with the National Environmental Policy Act of 1969 (NEPA).

If your agency is planning a project which anticipates the use of Federal-aid highway funds, you will have to meet the requirements of the transportation planning process. The planning process begins with a long-term component, called the STP (Statewide Transportation Plan). The STP provides a broad vision for the State that considers the factors that may impact or be impacted by transportation investments over a time horizon of at least twenty years. The next part of the plan-

ning process is the STIP (Statewide Transportation Improvement Program). This plan lists in order of priority the projects expected to be advanced in the next three years. The STIP may also include a TIP (Transportation Improvement Program). A metropolitan area may use a TIP to list in order of priority the projects expected to be advanced within the next three years.

If your project has been included in the Statewide Transportation Plan and has received a high priority, then it may be included in the STIP which lists the projects to be initiated in the next three years. Identification in the STIP is necessary for the receipt of Federal funds.

> Note: If you are not familiar with the STIP, TIP, or Statewide Transportation Plan, you should contact your STD for assistance.

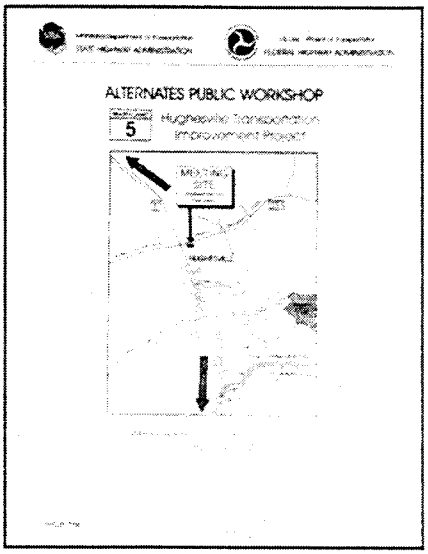
Environmental Planning Process

Another planning area which requires early consideration is the management of the environmental review process in accordance with NEPA. The NEPA process is critical to successful project development and, in fact, provides the framework for FHWA's project development process. **Your STD should be contacted for assistance in NEPA process coordination.**

Public Involvement

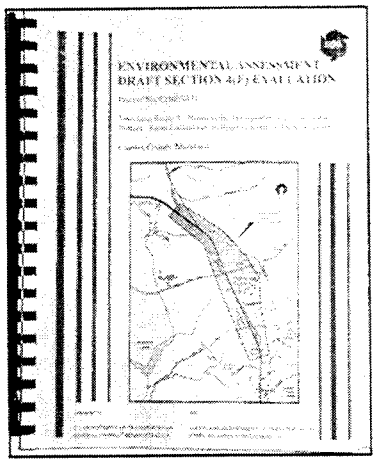
Public involvement is necessary throughout the planning process and in the environmental review process. Public involvement may take place through the public's attendance at meetings of the local governing body, newspaper articles and advertisements, letters and newsletters, and certainly in public meetings held expressly to discuss the project. It is the public's right to know about and comment on proposed projects and their potential benefits and impacts. However, the level of public participation will be based on the project's size and its impact on the surrounding community and the natural environment.

Typical Project Development Cycle



Development of Project Alternatives. Once the need for a highway project has been identified, the agency determines a broad, general location (the corridor) where the potential road may be constructed. A number of alternate routes (alignments) within the corridor will be considered. Once the alignments have been identified, a more detailed study of each will be undertaken. From a property acquisition point of view, key elements of the study are the number of people and businesses which will be displaced, the estimated cost to acquire the real property for the project, and the estimated costs to relocate those eligible and/or to move personal property from the right-of-way.

Hazardous Materials and Contaminants. One concern that should be addressed early in the project development process is the possible presence of hazardous material, waste, or other contaminants on the sites that you are considering for your project. If you suspect that a site is contaminated, preliminary surveys should be performed. If hazardous materials or waste are detected, you may want to do an in-depth survey to determine the cost of clean-up. If you ultimately decide to use one or more contaminated sites, you should include an estimate of clean-up costs in your overall project cost.



Environmental Assessment. NEPA requires an environmental analysis for any major Federal action; typically a Federal-aid highway project requires such an analysis. The analysis is a broad consideration of the social, economic, and environmental impacts which would be caused by construction of the various alternate alignments being considered. The number of people and businesses which would be displaced by potential construction; the effects on community facilities and services; and potential impacts on wetlands, parklands, and wildlife habitat (especially endangered species) are among the many effects examined as part of the analysis. Consideration is given to physical impacts on facilities as well as their ability to continue serving the community effectively after construction. Examples of such facilities include police and fire stations, hospitals, places of worship, community centers, and local shopping centers. Special consideration of potential impacts to public parks, recreation areas, wildlife and waterfowl refuge and historic sites are required by Federal law and by Federal regulations found at 23 CFR 771.135 (commonly referred to as "Section 4f").

At a minimum, the funding agency (typically your STD) will provide you the guidelines for performing the environmental analysis. If the project is complex, requires acquisition of many parcels or the displacement of people, or has known impacts on the natural environment, your agency may tell you the level of environmental analysis that must be performed. If the project impacts an area occupied by members of minority and/or low income groups, the requirements for environmental justice will have to be met. Information on environmental justice is available on FHWA's website at:

http://www.fhwa.dot.gov/environment/eJ2.htm

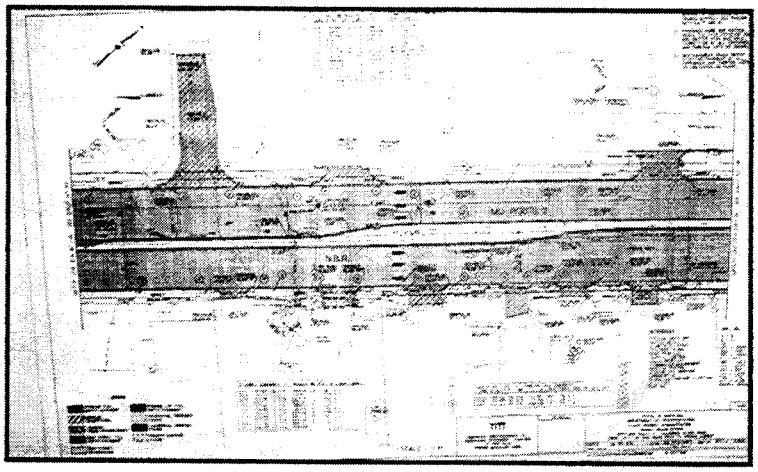
> **Note: It is important to note again that your STD should be contacted for assistance in NEPA process coordination.**

Public Involvement. Public involvement is an essential part of the project development process. The purpose of public involvement is to inform the public of the potential impacts of each alignment, gauge opinion and/or support for a project, and allow the public to comment on the project and each alignment. The scope of public involvement is dependent on the type of environmental documents which must be prepared for the project.

Selection of Alignment. After thorough consideration of the advantages and disadvantages of potential alignments, your agency will decide which approach best serves the needs of the public and will select the preferred alignment.

Utilities. Utility relocation is a critical part of the construction of a project. Early and continuing coordination with all of the affected utilities is critical to keeping your project on schedule. Utilities often need extensive lead time in order to reasonably schedule their work and obtain materials necessary for relocation of their facilities. Any affected utility company should be notified as soon as a project is identified that may require utility relocation. Once the utility is made aware (or notified) of the future need for a utility relocation, the utility company may be able to provide information concerning the location of existing utilities and any proposed new utilities for a project corridor. If a utility occupies land outside the right-of-way of a public highway, you will have to pay the utility to relocate its affected facilities in the same manner that you would compensate any other occupant. If a utility occupies land within the right-of-way corridor of a highway, your local and State laws governing the utility's right of occupancy in the right-of-way will govern whether you have to pay for all or part of the cost of relocating its facilities.

Design and Right-of-Way Plans. Following selection of the preferred alignment, the next step is designing a detailed plan for the roadway to be constructed. One of the products of the design process is the right-of-way plan. A right-of-way plan should contain essential data needed for appraisal and negotiation activities. Depending on your agency's requirements, these plans will illustrate the existing and proposed right-of-way lines, the property lines and owner's names for each property adjacent to the highway, the highway center line, design features, width of the new highway, grade changes, and other details of the construction. The plan should provide sufficient information for preparation of legal descriptions of the properties to be acquired.



A right-of-way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

Acquisition. Once the above steps have been completed, including the environmental analysis and development of the right-of-way plans, the project is ready to enter the acquisition phase.

> **Note: At this time, if Federal-aid funding is planned for your project, you will need to work with your STD to secure authorization to proceed.**

The appraisal of real property needed for the project is the next step in the acquisition process. The appraisal report must be reviewed, corrected (or revised) if necessary, and ultimately approved by the agency review appraiser. The approved appraisal then becomes the basis of the agency's offer of just compensation to the property owner. The offer may not be less than the fair market value established by the approved appraisal. Chapter V, Valuation, provides further explanation of this process.

The next step in the acquisition process is presenting the written offer to the property owner. The acquiring agency presents a written offer of just compensation to the property owner. The agency, acting

principally through an acquisition agent or negotiator, should make every reasonable effort to reach an agreement expeditiously with the property owner. If agreement is not reached, the agency will initiate condemnation proceedings. Chapter VI, Acquisition, provides further explanation of this process.

If there are occupants (including the property owner) or personal property on the parcel, relocation assistance is available. Chapter VII, Relocation Assistance, further explains the relocation process, benefits and services.

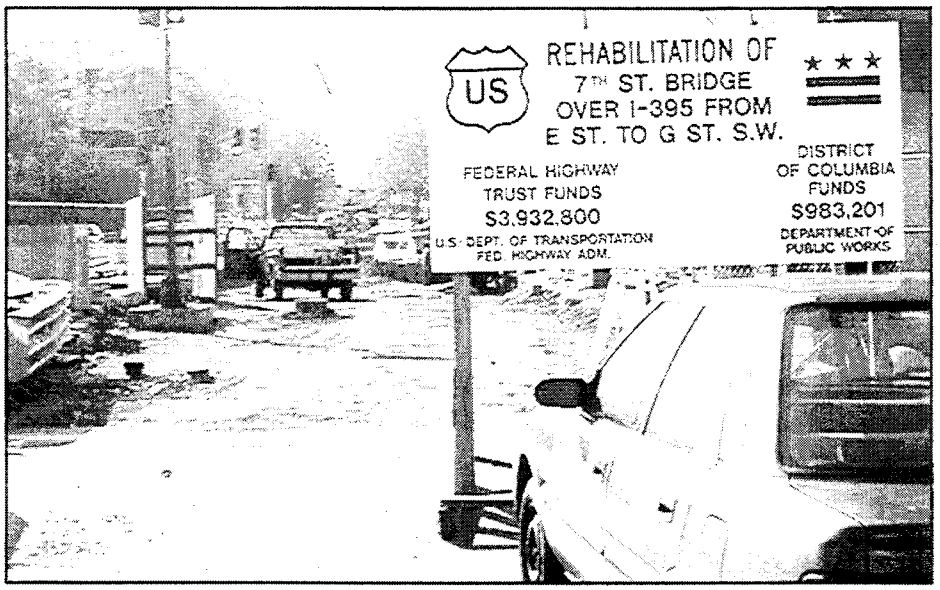
Right-of-Way Certification

Prior to advertising for construction bids for the project, the acquiring agency must prepare a right-of-way certification. A right-of-way certification states that the properties needed for construction of the project have been obtained, they are clear of any utilities, and structures which must be moved plus persons or businesses displaced by the project have been relocated. Essentially, the certification must include a statement that the agency has complied with Uniform Act requirements and that the project is ready for construction. Your agency then can advertise for bids to construct the project. In some limited circumstances, the agency may proceed with advertising for construction bids prior to the elements of certification being completed if it will not adversely affect any owners or occupants nor impede the construction contractors' activities.

This chapter has provided an overview of the project development process. In the next chapter, we focus on several specific administrative issues which may provide flexibility in the management of your agency's real estate acquisition program.

IV. ADMINISTRATIVE MATTERS

While this Guide is concerned primarily with the programmatic aspects of the Federal-aid highway right-of-way program, it is important also to understand the administrative framework in which the program operates.



Direct Federal Acquisition vs. Federal Assistance

There are two ways in which real property is acquired using Federal funds. The first is direct Federal acquisition. For direct Federal acquisition, an agency of the Federal Government buys the property directly from an owner and the United States of America becomes the title holder. The second method involves what is called Federal-aid or federally assisted acquisition. Under this method, non-Federal units of government (e.g., States, counties, cities, and others) and sometimes private entities, purchase real property as part of a project receiving Federal funds. This guide is concerned with the second method, Federal-aid. Under the Federal-aid highway program, FHWA expects the State to be responsible for the proper acquisition of real property even when it passes funds through to agencies at the local government level.

Cost-Sharing/Credits

Federal-aid highway projects, like most Federal assistance, typically require that the agency receiving funding (the assistance recipient) contribute a portion of the cost of the project, known as the non-Federal share. The majority of such funding comes from State or local funds provided by State or local legislatures for this purpose. *However, an assistance recipient may be able to reduce the amount of funds it needs to provide by obtaining credits which count toward its required share.* Credits may be obtained in several different ways.

Donations. When a private party wishes to donate all or a portion of his or her property, he or she must be fully informed of the right to receive just compensation for the property. If he or she decides to donate the property to a project, the assistance recipient (your agency) may receive credit toward its cost share for the fair market value of the donation, determined in accordance with applicable Federal regulations (see Chapter V, Valuation) and its own agency policy. In addition, recent changes in Federal highway legislation permit credits for the value of State or local government-owned land which is incorporated into a project. **The determination of credits can be complicated and we encourage you to contact your STD for information and assistance.**

Donations made by a Federal government agency are not eligible for use as matching share credit. In addition, the credit received by a State cannot exceed the State's matching share for the project to which the donation is applied.

A donation may be made at any time during a project's development. However, a donation made prior to the approval of an environmental document under the National Environmental Policy Act of 1969 (NEPA) may not influence the environmental assessment of a project, including decisions on the need to construct the project or the selection of specific locations. Consequently, all alternatives to a proposed alignment must be studied and considered pursuant to NEPA. Any property acquired by donation shall be re-vested in the grantor if the final alignment does not require the property.

Disposition of Certain Revenues

When States or local governments sell, lease or rent real property previously acquired with Federal funds, income is generated. The income derived from these activities may be retained (rather than returned to FHWA) if it is used to fund projects eligible under Title 23 U.S.C. Highways. Thus, such income may be spent on eligible activities occurring under a different project from the one which originally provided the funds. **You should contact your STD for further information and assistance.** Additional information regarding these issues can be found in Chapter VIII, Property Management.

FHWA Contracting Requirements

Federal financial assistance carries requirements as well as opportunities. Negotiations and relocation contacts with property owners must be conducted by qualified agency personnel; however, if your agency does not have personnel who are knowledgeable or experienced in these requirements, you can utilize consultants. Contracting for such consultants, whether they deal with appraisal, acquisition, or relocation, must follow approved State or local (with State approval) procurement procedures. [These requirements are applicable only when Federal funds are used in the acquisition cost of the right-of-way.] **We strongly encourage local government agencies with limited prior experience in contracting for right-of-way services to contact their STD for more detailed information on these requirements.**

This chapter has discussed issues which relate to the administration of your agency's real estate acquisition program. In the remaining chapters, we focus on elements relating to the acquisition of real property including valuation, acquisition, relocation assistance and property management.

V. VALUATION

The first step in the process of acquiring a particular property is valuing the proposed acquisition.

Just Compensation

The U.S. Constitution and most State constitutions require that a property owner be paid just compensation when the government acquires private property. The Uniform Act requires that an "approved appraisal" be used to develop an amount the agency believes to be just compensation. The amount offered to the property owner must be at least the amount of the approved appraisal.

The Appraisal Requirement

The appraisal, and its review and approval by the acquiring agency, are the cornerstones on which the entire effort to provide property owners just compensation is built. The Uniform Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it and that the amount of the approved appraisal be the basis of the offer of just compensation. In addition, the Uniform Act regulations (49 CFR, Part 24, Subpart B, see appendix for copy) require that appraisals be reviewed and approved. However, the Uniform Act also gives the lead agency (which is FHWA) the authority to develop procedures for waiving the appraisal requirement in cases of low-value, non-complex acquisitions.

Appraisal Waiver

The FHWA *has* developed appraisal waiver procedures; we want to discuss appraisal waiver first because we believe it will be applicable to many local agency acquisitions.

Appraisal waiver provisions are found in 49 CFR 24.102(c). These procedures are available for use by all acquiring agencies; however, not all use them. And, although the regulation specifies a $2,500 limit, FHWA has waived limits up to a maximum of $10,000 for some STDs at their request.

> **Note: You will need to check with your STD to find out, first, if they are using appraisal waiver procedures (and if they are available to you), and second, what the applicable waiver limit is.**

If appraisal waiver is available, you (the acquiring agency) will have to make individual parcel decisions as to whether waiver procedures are appropriate. The Federal requirement is that a waiver be used only if the acquisition is low-value (under the approved waiver threshold limit) and uncomplicated. There may be other considerations as well that may enter into your decision.

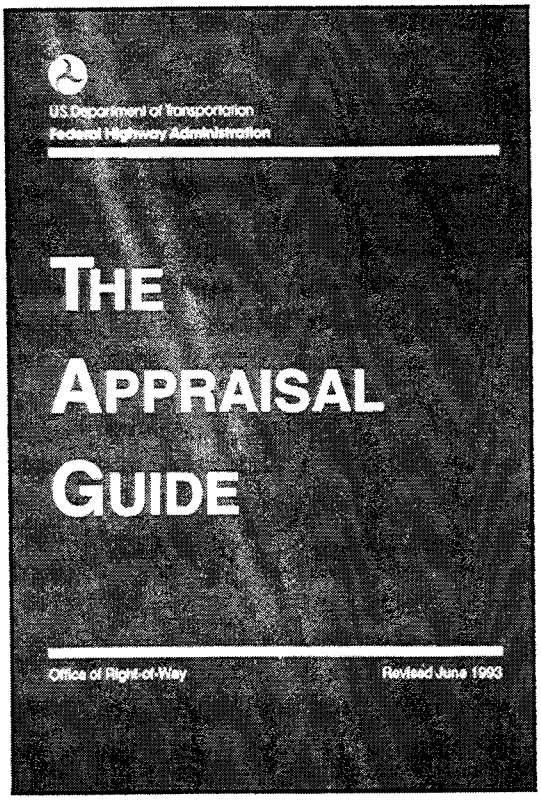
The STD will give you detailed procedures for using an appraisal waiver. Keep in mind that appraisal waiver is ***not*** a type of appraisal process, so appraisal-related requirements, such as owner accompaniment (see p. 15) and appraisal review, are not Federal requirements when waiver procedures are used.

APPRAISAL

What is an appraisal? The 1987 amendments to the Uniform Act provided, for the first time in Federal law, a definition of an appraisal:

> "A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

The definition contains all of the elements an appraisal must include to support use of Federal funds. Any real property valuation documentation that does not address these elements is not considered an appraisal. Once an appraisal of fair market value is reviewed and approved, it becomes the basis upon which the agency will establish an amount it believes to be just compensation. Having a well-prepared, unbiased and thoroughly documented appraisal report is the most critical step toward the goal of providing the property owner with the required estimate of just compensation.



http://www.fhwa.dot.gov/realestate/index.htm

In addition, each State and (possibly) local agency has developed a unique set of rules, regulations, and policies applicable to its jurisdiction.

> **Note: We recommend that you contact your STD regarding any technical questions about the appraisal process.**

A supplemental FHWA publication, *The Appraisal Guide*, is also a good source for additional technical appraisal information. This publication can be obtained through your local FHWA Division Office and is available on our website at:

http://www.fhwa.dot.gov/realestate/index.htm

APPRAISAL TECHNIQUES

Appraisals must be in writing and must be retained in your parcel file. The regulations found in 49 CFR Part 24 provide that the format and level of documentation for an appraisal depend on the complexity of the appraisal problem. That documentation must include valuation data and the appraiser's analysis of the data. In some cases, the appraisal problem will allow that "minimum standards" be used; others may require a "detailed" appraisal. However, any appraisal must contain sufficient documentation to support the appraiser's stated opinion of value.

"Minimum Standards" Appraisals

The Federal regulations require that an acquiring agency develop minimum standards for appraisals of low-value or uncomplicated acquisitions that do not require the in-depth analysis and presentation necessary for a detailed appraisal.

Such minimum standards must take into account the type of appraisal needed and appraisal context, consistent with STD appraisal standards. For example, eminent domain appraisals typically require more thorough data research, more in-depth analysis, and more complete documentation and reporting than appraisals prepared for the mortgage lending industry.

Agencies are encouraged to develop and use appraisal formats that meet their needs as long as they remain within Federal and State requirements. The use of customized formats may provide consistency among appraisals and aid both the review appraiser and the negotiator. The following are examples of customized appraisal formats:

Short Form

This form of appraisal may be utilized for whole residential acquisitions, acquisitions of vacant land, or for partial acquisitions involving easily supported damages to the remainder of the property. In all instances, the highest and best use must be the same both before and after the acquisition. The report must include a description of the property and the acquisition, an analysis of the comparable sales used, photographs of the property, and an analysis of the value conclusions.

Value Finding

A value finding format may be developed for uncomplicated acquisitions up to a specific low value, in which only land or land and minor improvements are involved. This format should include comparable sales data, although this data may be included by reference. It should include photographs of the property and a brief analysis of the value conclusion. If an in-depth before and after analysis is indicated, this format may not be appropriate.

Note: Keep in mind all appraisal formats must comply with the Uniform Act definition of an appraisal. You should contact your STD to verify applicability before utilizing a "value finding" format.

Detailed Appraisals

Detailed appraisals, as described in 49 CFR 24.103, should be used for all complex appraisal problems, whether the acquisition is of the whole property or only a part of it. The appraisal report should include an appropriate analysis of such factors as the highest and best use of the property (especially when that use is in transition or a change in the highest and best use will follow the acquisition), severance damages, special benefits, and special purpose properties.

In certain instances, a detailed appraisal may include the findings of a specialty report. A specialty report is a study of unique valuation aspects of the property, such as zoning and permit compliance, machinery or equipment on the property, mineral rights or forestation, or items that generally do not fall within the expertise of a real property appraiser.

A detailed report must contain complete documentation of the data and adequate support of the value conclusion.

A detailed appraisal should reflect STD appraisal requirements and contain the following items:

- The purpose of the appraisal, a definition of the rights or interest being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
- An adequate description of the physical and legal characteristics of the property being appraised (and in the case of a partial acquisition, an adequate description of the remaining property), a statement of any known or observed encumbrances, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- All relevant and reliable approaches to value (Cost, Income Capitalization and Sales Comparison). When sufficient market sales data is available for the specific appraisal problem, the agency, at its discretion, may require only the market (sales comparison) approach. If more than one approach is used, there must be an analysis and reconciliation of those approaches, including an explanation of the final conclusion of value.
- A description of comparable sales, including a description of relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- A statement of the value of the real property to be acquired. For a partial acquisition, a statement of any damages and benefits to the remaining real property also is required.
- The effective date of valuation, date of appraisal, signature, and the certificate of the appraiser. (See page 20 for a sample certificate.)

Owner Accompaniment

The Uniform Act requires that the property owner (or the owner's designated representative) be given the opportunity to accompany the appraiser during inspection of the property. The purpose of this requirement is to ensure that the owner has the opportunity to advise the appraiser of features of the property which might impact the valuation of the property, as well as allow the owner to indicate any features of the property that might not be obvious to the appraiser (such as the location of underground structures, i.e., wells, septic systems, storage tanks, utilities).

Either your agency or the appraiser must invite the property owner to accompany the appraiser during inspection of the property. To assure that this requirement is not overlooked, you should advise your appraiser of this responsibility. Concurrently, you should contact the property owner to supply him or her with the name, address, and phone number of the appraiser. An invitation to accompany the appraiser should be in writing and allow sufficient lead time for the owner to arrange to be present or to request an alternate time. You should document these steps in your parcel file. If the owner declines the invitation, that fact should be documented in the parcel file.

If it later becomes necessary to update the appraisal, the owner does not have to be given an opportunity to accompany the appraiser on the reinspection.

Appraiser Qualifications and State Certification

Under the Uniform Act regulations, each STD must develop criteria for determining the minimum qualifications of appraisers, consistent with the complexity of the appraisal assignment. You should review the qualifications of your appraisers, whether staff members or contractors, and utilize only those qualified for each assignment under STD requirements.

> **Note: If you use a contract appraiser to do a detailed appraisal, the appraiser must be State-certified in accordance with Title IX of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.**
>
> **Note: We recommend that you consult your STD concerning the appropriate appraiser qualifications and the content and form for the appraiser certification.**

Appraisal Review

If you get an appraisal, you must have that appraisal reviewed. The Uniform Act requires that the estimate of just compensation be not less than the agency's approved appraisal. The appraisal becomes "approved" through appraisal review.

Federal requirements for appraisal review are found in 49 CFR 24.104. The regulations require that acquiring agencies have an appraisal review process and that a qualified reviewing appraiser:

> Examine all appraisals to assure they meet applicable appraisal requirements and,
>
> Prior to acceptance, seek any necessary corrections or revisions to the appraisal.

It is the review appraiser's responsibility to determine if the appraisal report contains accurate data, adequate documentation, and appropriately supported conclusions.

The appraisal review process and your review appraiser also should ensure that there is consistency among the valuations on a project wide basis. For example, two residences, which are similar in most respects and from which your agency is making similar acquisitions, should be appraised and valued similarly.

Deficient Appraisals

If the appraisal is deficient, the review appraiser should return the appraisal report to the appraiser for correction, with the deficiencies noted.

> Note: There are instances when the review appraiser discovers minor errors (i.e, insignificant math errors, misspellings, and typographical errors) in an appraisal report. In those cases where minor changes and corrections are warranted, they can be made by the review appraiser without returning the report to the appraiser. All such changes should be initialed and dated by the review appraiser. It is sound policy to transmit a copy of the changes to the appraiser in the event an update is needed at a later date.

If acceptable corrections or revisions to an appraisal report cannot be obtained from the appraiser,

and the reviewing appraiser is unable to approve (or recommend approval of) the appraisal,

and your agency determines it is impractical to obtain an additional appraisal,

then the reviewing appraiser may develop appraisal documentation, either independently or by reference to acceptable relevant information developed by others, to support an approved or recommended value.

Review Considerations

The review appraiser should inspect the appraised property and the comparable sales included in the appraisal report. If a field inspection cannot be made, the review appraiser should document the reason(s) in the review report. The reviewer should examine the appraisal report to determine that it:

- Follows accepted appraisal principles and techniques in the valuation of real property in accordance with State and Federal requirements.
- Has been completed in accordance with the agency's appraisal specifications.
- Contains or makes reference to the information necessary to explain, substantiate, and thereby document the conclusions and estimate of fair market value.
- Contains an identification or listing of the buildings, structures, and improvements on the land as well as the fixtures considered part of the real property.
- Includes consideration of compensable items, damages and benefits, if any, and does not include compensation for items non-compensable under State law.
- Contains an estimate of fair market value for the acquisition and, for partial acquisitions, an allocation of the estimate of fair market value for the real property and for damages, if any, to the remaining property.

Appraisal Review and Just Compensation

There are times when the fair market value of a property does not constitute just compensation. Those situations may include instances in which the property is unique in nature; the appraisal, although properly prepared, does not estimate fair market value with any certainty; or the market value does not adequately measure just compensation.

When these situations occur, the acquiring agency may establish an amount that, in its opinion, represents just compensation not identical to the approved fair market value. Typically, it is the review appraiser who initiates the consideration that just compensation be based on considerations other than the approved appraisal. Depending on who is performing the appraisal review (see sample Certificate of Appraiser on p. 20) and agency policy, the appraisal review may include an estimate of just compensation; and that estimate may be based on more than the approved appraisal. In any case, agency files must contain documentation and justification for any amount of just compensation that is established.

> Note: An acquiring agency may not delegate the function of determining the estimate of just compensation to be offered to the property owner to someone outside the agency — including a contract review appraiser. This is a critical point that must not be overlooked.

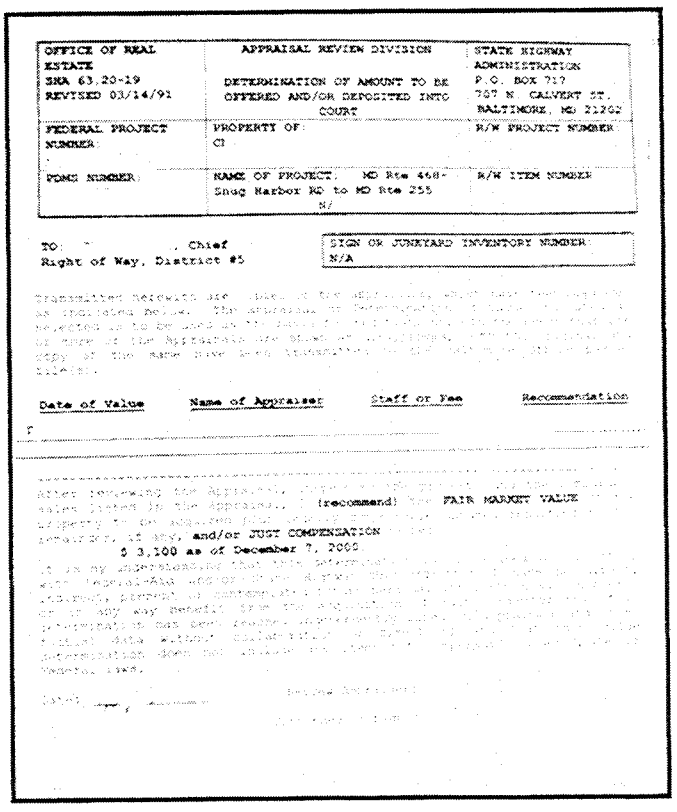
Appraisal Review Certification and Report

The reviewing appraiser is also required to sign a certification that:

- Sets forth the recommended or approved value of the property,
- Identifies the appraisal report(s) reviewed, and
- States that the reviewer has no interest, present or future, in the property being reviewed.

Upon completion of the appraisal review, the review appraiser should place in the agency's parcel file a signed and dated report setting forth:

- The amount of the approved appraisal of fair market value and the recommendation or estimate of just compensation, including an allocation of compensation for the real property acquired and, if applicable, of damages to remaining real property; identification of buildings,



OFFICE OF REAL ESTATE
SHA 63.20-19
REVISED 03/14/91

APPRAISAL REVIEW DIVISION

DETERMINATION OF AMOUNT TO BE OFFERED AND/OR DEPOSITED INTO COURT

STATE HIGHWAY ADMINISTRATION
P.O. BOX 717
707 N. CALVERT ST.
BALTIMORE, MD 21202

FEDERAL PROJECT NUMBER:

PROPERTY OF:
CI

R/W PROJECT NUMBER:

FDMS NUMBER:

NAME OF PROJECT: MD Rte 468 - Snug Harbor RD to MD Rte 255
N/

R/W ITEM NUMBER:

TO: , Chief
Right of Way, District #5

SIGN OR JUNKYARD INVENTORY NUMBER:
N/A

Date of Value | Name of Appraiser | Staff or Fee | Recommendation

(recommend) FAIR MARKET VALUE

and/or JUST COMPENSATION
$ 3,100 as of December 7, 2000

structures, and other improvements on the land; and identification of fixtures considered part of the real property being acquired.

- Whether, as part of the appraisal review, there was a field inspection of the parcel to be acquired and of related comparable sales. If no field inspection was made, the reason(s) should be stated.

- That the review appraiser has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from its acquisition.

- That the estimate, or recommended estimate, of just compensation has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

The degree of detail provided in the review appraiser's written review report should reflect the complexity of the appraisal problem and report under review.

Appraisal Review Contracting

Historically, the STD appraisal review function has been the responsibility of staff reviewers and included the responsibility of estimating just compensation.

More recently, STDs, and especially local agencies, have hired contract review appraisers to perform the appraisal review function. The Uniform Act makes it clear that the agency must establish an amount believed to be just compensation. **Therefore, if an appraisal review is done by a contract review appraiser, the acquiring agency must retain the responsibility for establishing an estimate of just compensation.**

Federal Project No. _____ Parcel No. _____

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the data book or report which supplements said appraisal.

That to the best of my knowledge and belief, the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with the acquisition of right-of-way for a project to be constructed by the _____ of _____ with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations, and policies and procedures applicable to appraisal of right-of-way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State.

That my analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Act and Government-wide Regulation (49 CFR Part 24).

That any increase or decrease in the fair market value of the real property appraised caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than physical deterioration within the reasonable control of the owner, was disregarded in this appraisal.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

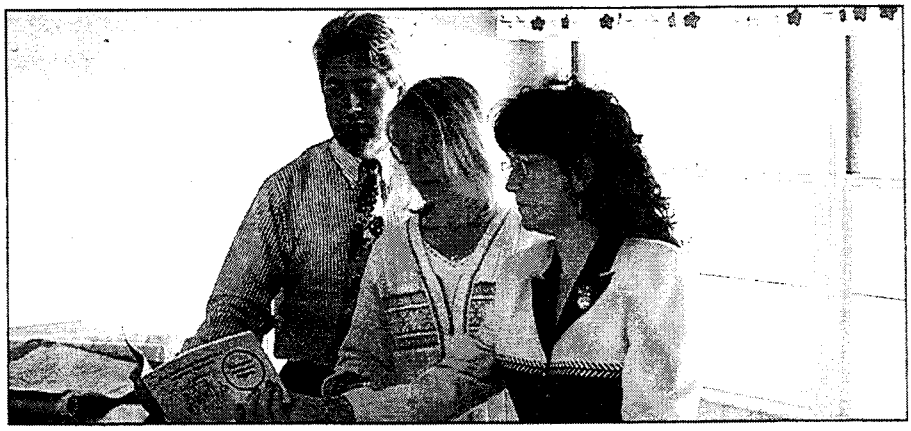
That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said State or officials of the Federal Highway Administration and that my opinion of just compensation as of the ___ day of _____ , 20___, for the acquisition of the subject property is _____ based upon my independent appraisal and the exercise of my professional judgment.

Date _____ Signature _____

VI. ACQUISITION



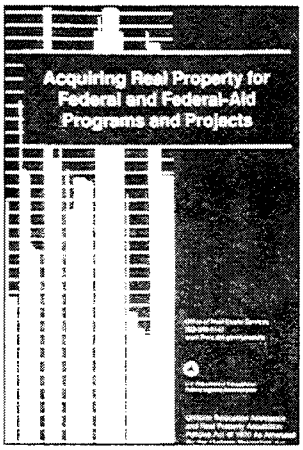
Acquisition is one of the most sensitive aspects of an agency's activities because it involves direct personal contact with the people affected by a project. Yet it is imperative that agencies acquire property interests expeditiously to facilitate public improvement construction projects.

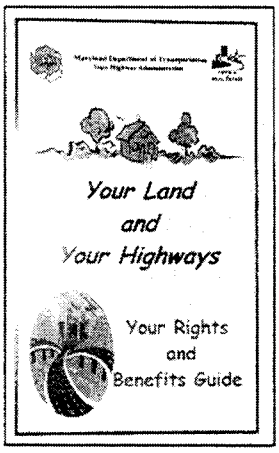
In obtaining needed properties, your primary goal should be to acquire through negotiation rather than through the use of condemnation authority. Acting as an acquisition agent or negotiator, you play an important role in achieving this goal. Negotiations should be conducted by a qualified member of the agency's staff. In cases where you have insufficient staff to perform negotiations, fee negotiators may be hired by contract (see Chapter IV, Administrative Matters, for information on FHWA contracting requirements).

Basic Acquisition Requirements

The following is a list of the basic acquisition requirements for agencies receiving Federal financial assistance. These list items, as well as others, are discussed in this chapter.

1. Personally contact each real property owner or the owner's designated representative in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property.
2. Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.
3. Give the property owner an opportunity to consider the offer.
4. Conduct negotiations without any attempt to coerce the property owner into reaching an agreement.
5. Provide at least 90 days written notice of the date by which the move is required.
6. Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.





Personal Contact

An acquiring agency should make all reasonable efforts to personally contact each real property owner or the owner's designated representative and schedule an appointment at a convenient time and place. The purpose of this contact is to explain the negotiation process to the property owner as well as the responsibilities of both the acquiring agency and the property owner. One way to accomplish this is to provide the property owner with an acquisition brochure. Samples of such brochures are available from either our website at:

http://www.fhwa.dot.gov/realestate/index.htm

or from your STD. This kind of personal contact can be of great importance as the negotiator strives to attain rapport with the property owner, which can help inspire confidence in the acquisition process and the fairness of the offer being made.

If all reasonable efforts to make personal contact with an owner fail, or if personal contact is impracticable, for example, such as when an owner lives in another State, the owner may be contacted by certified mail or other means appropriate to the situation. An alternative procedure, Accelerated Negotiations (see following), may be utilized under certain conditions. Some States may have statutory requirements regarding this process. **Note: FHWA recommends that you contact your STD with any questions.**

Accelerated Negotiations (First Offer by Mail)

This is an alternative approach to contacting property owners in person. Sometimes, constraints on right-of-way manpower and travel funds make it advisable to effect cost savings and to accelerate the acquisition process. This accelerated process allows the initial phase of negotiations to begin with a mailing to the property owner. The mailing consists of the offer letter, the summary statement of just compensation, a deed or option form, and a property plat or sketch showing the effect of the acquisition.

Within a reasonable period after the mailing, you should follow up by telephone. A telephone conversation provides the property owner with a mechanism to obtain answers to questions or an opportunity to exercise the option of setting up an appointment for personal contact. **All requests for personal contact by property owners should be honored.**

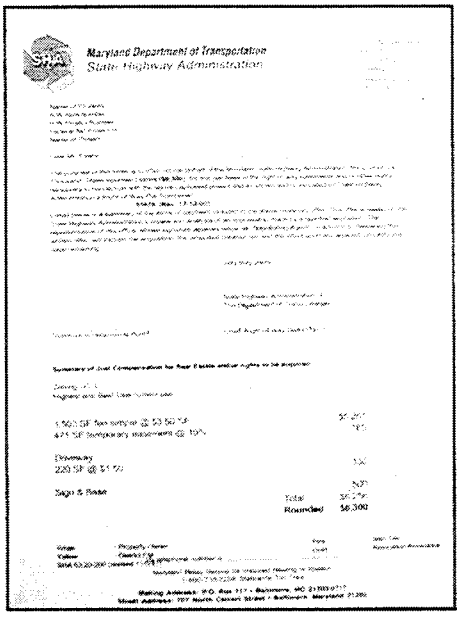
When personal contact does occur, the property owner should be able to discuss substantive issues, having had the offer in hand for several weeks. From this point on negotiations should follow the normal sequence.

Generally, the accelerated negotiation approach has resulted in positive experiences. It saves both administrative costs and time on minor claims in which no dispute has arisen over the amount of the

offer. The owner signs the deed or deed option form in a timely manner which enables the agency to focus negotiation efforts on other parcels.

Note: This accelerated process may not be utilized on parcels where relocation is involved.

Prompt Written Offer


Maryland Department of Transportation
State Highway Administration

Once the amount of just compensation has been determined (see Chapter V, Valuation), a prompt written offer must be made to the property owner. The offer must include a description of the real property or real property interests being acquired and the specific purchase price being offered. Along with the offer, the acquiring agency must provide the property owner a Summary Statement of Just Compensation which explains the basis for the offer and provides information necessary for the owner to make a reasonable judgment concerning the amount of the offer. In addition to the offer amount and the property location, the statement should include an identification of buildings, structures, and other improvements to be acquired, including removable building equipment and trade fixtures (see Owner Retention of Improvements, p. 32); and an identification of any separately held ownership interest in the property, e.g., a tenant-owned improvement (see Tenant-Owned Improvements, p. 31); and a statement, if appropriate, that such interest is not covered by the offer.

The agency may include additional information that it deems appropriate.

Owner Opportunity to Consider Offer

You must give the property owner a reasonable opportunity to consider the offer. This not only provides the owner a chance to thoroughly review and evaluate the offer (including the opportunity to obtain professional advice or assistance), it eliminates any appearance of coercion (see following paragraph). It also provides a chance for the owner to present material he or she believes is relevant to determining the property's value, and to suggest modifications to the proposed terms and conditions of the purchase. You must consider the owner's presentation.

No Coercive Action

Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to imply that the negotiation, and in particular the offer, is a "take it or leave it" proposition. Similarly, the use of condemnation as a threat must be avoided. Other examples of actions the acquiring agency must avoid include advancing the time

of condemnation, deferring negotiations, or delaying the deposit of funds with the court to coerce an agreement with the property owner.

90-Day Notice

One of the most basic protections of the Uniform Act provides that no displaced person may be required to move without at least 90 days' written notice of the date by which such move is required. We discuss this requirement as it relates to relocation in Chapter VII, Relocation Assistance, but it also has an acquisition aspect. Simply put, this statutory requirement places limits on the scheduling of construction. An agency must schedule project construction so that no displaced person will have to move without being afforded the 90 days' notice described above.

Negotiation Options

In discussing acquisition, we have stated repeatedly that your agency's prime goal in obtaining real property should be to acquire through negotiations rather than condemnation and litigation. This approach reflects the Uniform Act requirement to "... make every reasonable effort to acquire expeditiously real property by negotiation." The administrative cost and time expended by acquiring property through litigation is significant and places additional burdens on a court system that is already overloaded.

However, it is necessary to recognize the limitations of the appraisal process. This process, while structured and professional, is by nature not scientifically precise. Moreover, in many cases property owners are suspicious of governmental acquisitions and may believe that just compensation offers are biased. Recognizing these factors, it may be both useful and appropriate to consider different acquisition strategies if an agreement with a property owner cannot be reached through the normal negotiation process.

One of these strategies, the administrative settlement, has long been incorporated into FHWA's regulations. An administrative settlement may provide the flexibility needed to resolve differences of opinion as to the amount of compensation. Another approach, Alternate Dispute Resolution (ADR), may be helpful in removing communication or other barriers to agreement. Mediation, one of the many ADR techniques, has often been used to facilitate the acquisition of right-of-way by public agencies. Another option is the Legal Settlement, involving a resolution of the dispute after condemnation has been filed but prior to court award.

We discuss these approaches in greater detail below. FHWA recommends that, in appropriate situations, both administrative settlements and ADR be considered prior to an agency initiating a legal settlement or condemnation.

Administrative Settlements

An administrative settlement is a settlement which occurs prior to the invoking of the agency's condemnation authority. It typically is more than the agency's approved offer of just compensation but not excessively so, considering the expected cost of litigation and the potential cost of project delays. An administrative settlement should be considered when reasonable efforts to negotiate an agreed acquisition price have failed but there appears to be the potential for agreement.

An administrative settlement goes beyond the appraisal and appraisal review process. Your agency designates an official who has the authority to approve administrative settlements. The designated official should give full consideration to all pertinent information. He or she prepares a written justification which indicates that available information (e.g., appraisals, including the owner's appraisal if one is available, recent court awards, estimated trial costs, and valuation problems) supports such a settlement, and that he or she approves it as being reasonable, prudent, and in the public interest. The extent of the written explanation is a judgmental determination and should be consistent with the circumstances and the amount of money involved. You should maintain appropriate documentation in the parcel file to support this action.

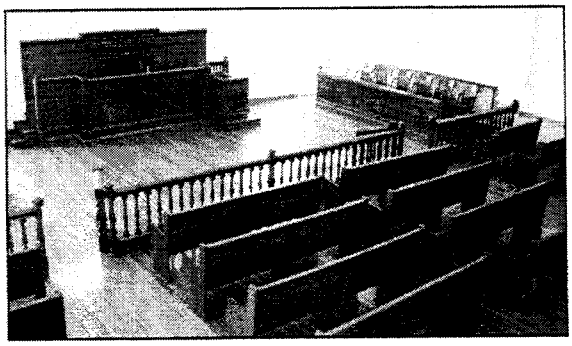
Alternate Dispute Resolution — Mediation

Often contesting parties, unable to reach an agreement, turn to third parties for resolution of their disagreement. One such possibility, under the broad umbrella of ADR, is mediation. Mediation may not be appropriate in every contested case, yet acquiring agencies should give consideration to its potential use when confronted with an acquisition dispute. A decision to employ mediation should be made on a case-by-case basis. Some of the factors to consider include the property owner's acceptance of mediation, the uniqueness and/or complexity of the acquisition, the specific technical issues in dispute, the agency's historic success in condemnation (or lack thereof), and the potential time and administrative cost savings. For example, because of difficult appraisal and other technical issues involved, mediation may be a particularly worthwhile tool in attaining settlement on parcels encumbered with hazardous waste.

> **Note: The expense of employing a professional mediator or other ADR specialist is considered to be a legitimate project cost.**

Role of Legal Counsel

If negotiations have failed and an administrative settlement or ADR is not appropriate or is not successful, it may be necessary for your agency to acquire the property by exercising its power of eminent domain. At this point, the acquisition should be turned over to legal counsel to institute condemnation proceedings (see following section). Successful condemnation is dependent on effective coordination. Careful attention to eminent domain consid-



erations is vital to any acquisition program. Legal counsel should be an integral part of the acquisition team from the beginning of the project. During the planning and design stages, legal personnel may be able to detect complex title or valuation pitfalls which can be avoided or minimized during the appraisal process. They should be called upon for advice on such matters as the law on benefits, before and after appraisals, distinguishing whether an item is personalty or realty, and the compensability of particular items. Counsel should be given an opportunity to offer advice prior to the determination to condemn. Once a case is referred for condemnation, counsel must have all pertinent information relative to the case, including facts on construction of the project and its effect on the property, information gathered by negotiators, sound appraisals, and competent witnesses. Counsel should know the weak points as well as the strong points of each case. In addition, counsel should be furnished with and kept current on Federal and State requirements concerning documentation to ensure that there is appropriate justification for the actions taken.

In preparing a case and deciding whether to recommend a legal settlement or trial, the agency trial attorney will discuss the taking with the acquisition team, the appraiser, the agency reviewing appraiser, and other necessary expert and lay witnesses. To familiarize themselves with the facts of the case, counsel should carefully analyze the appraisal of the property with the appraiser. This analysis should include an inspection of the property as well as any other comparable properties that may be used during the trial. The appraisal must conform to the date of valuation specified under State and local eminent domain law and be based on a consideration of all compensable elements of damage under applicable law. Counsel should attempt to have the appraisers reconcile any factual or legal differences without influencing their independent exercise of judgment in any way. On the whole, careful attention should be given to any element which counsel concludes is relevant to the case.

As noted above, legal settlements involve negotiations between the acquiring agency's legal staff and the property owner and/or his or her attorney. These types of settlements may result in stipulated settlements approved by the court in which the condemnation action has been filed. The appropriate agency file must be documented whenever a legal settlement is made, and the rationale for the settlement set forth in writing. Legal settlements based on new or revised appraisal data as the principal justification must be coordinated with and approved by the responsible official of the acquiring agency. All pertinent data should be reviewed by the agency's real estate office to ensure that adequate documentation for Federal-aid funding is provided.

CONDEMNATION

Condemnation proceedings take place in a State or county court and, as we have noted previously, are governed by State law. This means that State law will determine not only the condemnation process but also the various items for which compensation must (or may not) be paid by the acquiring agency.

In some jurisdictions, the condemner may be required to prove necessity for the acquisition or appropriation of the condemned property. This may only be required if a property owner challenges the proposed acquisition of his or her real property. Necessity is usually proved by offering engineering and/or design plans to substantiate the need to acquire.

In many States, prior to a trial before a judge or jury, the law provides the property owner a hearing before a board of commissioners or "viewers" who have been appointed by the court. Both the property owner and the agency are permitted to present information to the board, which forms the basis of the board's eventual award of just compensation. Once the board makes its determination, the property owner and the acquiring agency each may accept or reject it. If either party rejects the award, the court will schedule a trial.

During the trial, each side will present arguments in support of its position on the value of the property. Both the acquiring agency and the property owner may call witnesses, agency employees and/or consultants to testify. Finally, the court will set an amount it determines to be just compensation and order the agency to pay that amount.

Payment Before Possession

If an amicable settlement between the property owner and the acquiring agency is reached prior to the need to initiate condemnation, the agency will pay the owner the agreed-upon purchase price. If the owner and the agency cannot reach agreement and the agency does institute condemnation proceedings, the agency then will deposit an amount not less than the approved appraisal with the court or make the money available by other means. This amount may be withdrawn by the owner without jeopardizing his or her rights in the condemnation proceedings.

Under the Uniform Act, no owner may be required to surrender possession of real property before payment is made available. This payment is based on either the agency's approved estimate of just compensation, an amount negotiated after the agency initiates condemnation proceedings, or the amount awarded by the court. Only in exceptional circumstances, with the property owner's voluntary consent, can the agency obtain a right-of-entry for construction purposes before making payment available to the owner.

Alternative Means of Property Acquisition

In previous sections of this chapter we have discussed acquiring property through negotiation or condemnation, each ending with the payment of just compensation. While every property owner is entitled to receive just compensation, there may be instances where property is acquired through donation, donation in exchange for construction features, or dedication. We will discuss each of these topics below.

Donations

Most of the time when an agency needs to acquire real property for a Federal or federally assisted project, it will acquire that property through negotiations with the owner or through the exercise of its power of eminent domain (condemnation). The preceding portions of this chapter have been concerned with those situations. Sometimes, however, and for various reasons, the owner is willing to give all or a portion of the needed property to the acquiring agency for less than what constitutes just compensation. Such an acquisition is referred to as a donation.

When an owner is willing to make a donation, that individual or entity retains specific rights that must be respected. For example, you must provide the owner an explanation of the acquisition process, including the right of having your agency appraise the property and to receive an offer of just compensation. Only after receiving such an explanation may the property owner waive these rights and the agency accept the donation. The explanation should be given in a manner that is non-technical and easily understood.

In most cases appraisal of the real property is advantageous both to the agency and the property owner. For example, on a federally funded project, an agency may need an appraisal to determine the donation's value as a credit against the agency's matching share of project cost (see Cost-Sharing/Credit section of Chapter IV, Administrative Matters, for more detail on credits). As with all acquisitions, valuation of real property donations should be done in accordance with applicable Federal regulations and approved agency policy. For properties with a low estimated fair market value where the valuation problem is uncomplicated, the acquiring agency may waive the appraisal in accordance with the STD's approved procedures (for further information see the Appraisal Waiver section of Chapter V, Valuation).

Similarly, the property owner may need to know the value of the donated property for tax purposes. The Internal Revenue Service requires that an appraisal be prepared by a disinterested, unbiased third party when an owner is claiming a donation on his or her tax forms. While the acquiring agency is not obligated to use appraisers other than its own staff, the agency may find it prudent to advise the property owner to select a fee appraiser and offer to pay the appraisal fee. Paying the cost of the appraisal may help to facilitate the donation.

> Note: **Acquiring agencies should be aware that donations of real property must be considered as part of the environmental review process discussed in Chapter III, Project Development. Additionally, before accepting a donation, acquiring agencies should have a process for determining whether or not the property is contaminated or has hazardous wastes present. Your STD should be contacted for assistance and advice.**

Donations in Exchange for Construction Features

An acquiring agency may accept a property owner's offer to donate a whole or part of a property in exchange for services or facilities that will benefit that owner.

For instance, an agency may require a narrow strip of land for a street-widening project. The property owner and the agency may negotiate an agreement that would require the agency to provide an additional driveway, entrance, or other features in lieu of cash compensation. The agency should compare the donated property's value and the cost of additional construction features to ensure that construction costs do not exceed the value of the donated real property.

Dedications

Dedication is the process of reserving a parcel of land for a future public use. A dedication is usually made as part of the subdivision or zoning approval process.

An acquiring agency may accept, as part of a Federal or federally assisted project, a parcel that a developer has dedicated or proposes to dedicate. The agency also may accept land dedicated pursuant to the local planning process or at the request of the property owner for land use concessions that are consistent with applicable local and Federal project and environmental regulations.

Real property obtained through normal zoning, or through subdivision procedures requiring dedication of strips of land in the normal exercise of police power, is not considered to be a taking in the constitutional sense and does not call for payment of just compensation or compliance with the Uniform Act. Land acquired in this manner may be incorporated into a federally assisted project without jeopardizing participation in other project costs. **However, any dedication undertaken to circumvent Federal requirements is unacceptable.**

Additional Considerations

The following represent a number of additional areas which impact the negotiation/acquisition process.

Assessments

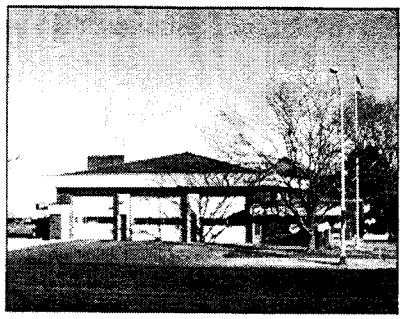
An assessment is a tax or fee levied on properties that will benefit directly from a public construction project.

When Federal funds participate in a project, an acquiring agency (you) may not levy a special assessment solely against those properties experiencing acquisitions for the public improvement for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an acquiring agency may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances.

Functional Replacement

Sometimes the real property to be acquired for a highway project includes a public facility such as a school or a police or fire station, the loss of which would have an adverse impact on essential public services for the affected community. FHWA recognizes that in such circumstances an alternative method of acquisition, functional replacement, may be needed to serve the public interest. As the term implies, functional replacement provides for the replacement of the public facility in question, and **its use is limited to publicly owned, public use facilities.**



In the typical acquisition, the offer to acquire represents an estimate of just compensation determined through the appraisal of fair market value. Under functional replacement, the facility, including land and improvements, may be replaced by another facility with FHWA participating in the cost of a facility of equivalent utility. For example, if a community fire station with two bays will be acquired for a project, FHWA may participate in the cost of a new fire station of equivalent utility. Should the community choose to build a four-bay facility or add functions or services not present at the acquired site, FHWA participation generally will be limited to the level of function provided by the original facility.

The use of the functional replacement approach is at the option of your agency, with the concurrence of your STD, and must be permissible under State law. **FHWA concurrence that functional replacement is a public necessity or in the public interest also is necessary.**

Due to the complexities usually encountered in the construction of a replacement facility, early and frequent consultation among the community, the State, and FHWA is essential. The parties should develop an agreement setting forth appropriate conditions and respective responsibilities well before FHWA concurrence in the construction award, with appropriate FHWA review and approval of the Project Specifications and Estimates (PS&E).

Inverse Condemnation

Inverse Condemnation is the legal process by which a property owner may claim and receive compensation for the acquisition of or damages to his property as the result of public improvement. This may occur when an agency, either actually or allegedly, acquires a property or property interest without either an offer to acquire through negotiations or the institution of condemnation proceedings. For example, the design and construction of a road inadvertently results in a property owner losing access to his property. The access to the property can be denied in a number of ways including the fencing of property, denial of access across easements, or the denial of access to land caused by regrading of public right of way. The property owner in this scenario is not contacted or compensated because the loss of access was not planned or anticipated by your agency. The Uniform Act prohibits an agency from intentionally making it necessary for the property owner to begin legal proceedings to prove an acquisition occurred. Planning and project development activities normally do not constitute acquisition without some other action that substantially deprives the owner of the use of and enjoyment of the property.

Inadvertent action or unreasonable delay in beginning a project may result in making the property owner think an acquisition has occurred, even without physical taking of the property. Timely project planning and communication with property owners should prevent this situation from occurring.

Uneconomic Remnants

An uneconomic remnant is a portion of a larger property determined by an acquiring agency to have little or no utility or value to its owner because of a partial acquisition of the larger portion. If the acquisition of only part of a property would leave the owner with an uneconomic remnant, the head of your agency must offer to acquire the remnant.

An uneconomic remnant may still have some utility or value. The ultimate test is whether it has utility or value to the present owner. The acquiring agency must make this determination. The agency is obligated only to offer to purchase the uneconomic remnant; the owner may decline the offer. The offer to purchase an uneconomic remnant may be included in the formal written offer for the portion of the property needed for the public project or, at the acquiring agency's discretion, it may be made in a separate offer.

For highway projects, Federal funds may be used to acquire uneconomic remnants regardless of whether the remnants are incorporated into the highway right-of-way. Uneconomic remnants incorporated within right-of-way limits lose their separate identity and become part of right-of-way. Should it no longer be needed for highway purposes, the uneconomic remnant would be disposed of in the same manner as other portions of highway right-of-way.

While the preceding describes Uniform Act requirements, State laws on eminent domain vary in their treatment of uneconomic remnants and must be consulted before an acquiring agency makes an offer.

Tenant-Owned Improvements

When you acquire a property that is occupied by a tenant, you must consider the tenant's real property interests as well as those of the property owner. This is most often relevant in the displacement of tenant-operated businesses which have erected a structure or installed other real property improvements. The Uniform Act requires that such tenants receive just compensation for those improvements if they will be removed or otherwise adversely affected by the proposed acquisition.

An improvement located on the property to be acquired should be treated as real property regardless of ownership. Acquisition from the tenant should follow the same procedures as those for acquiring real property from the owner.

Just compensation for a tenant-owned improvement should be based on the amount that the improvement contributes to the fair market value of the whole property, or its removal value, whichever is greater. Removal value is considered to be the same as salvage value.

No payment should be made to a tenant-owner for improvements unless:

- The tenant-owner assigns, transfers, and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;
- the owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- the payment does not result in the duplication of any compensation otherwise authorized by law.

The compensation payable for tenant-owned improvements varies from State to State and may be affected by terms of the tenant's lease. **Once again, we recommend that you consult with your STD concerning payment for tenant-owned improvements.**

Owner Retention of Improvements

The owner of improvements located on real property being acquired for a public project may be offered the option of retaining those improvements at a value determined by the acquiring agency. The agency's retention value determination should be available at the initiation of negotiations or within a reasonable period of time after the owner expresses an interest in retention.

Retention value should be established by property management personnel through comparative analysis of improvements sold at public sale or another valuation method. Just compensation paid to the owner should be no less than the difference between the amount determined as just compensation for the owner's entire interest and the retention value of the improvement.

The owner is responsible for removing his or her improvement prior to the initiation of construction.

Hardship and Protective Buying

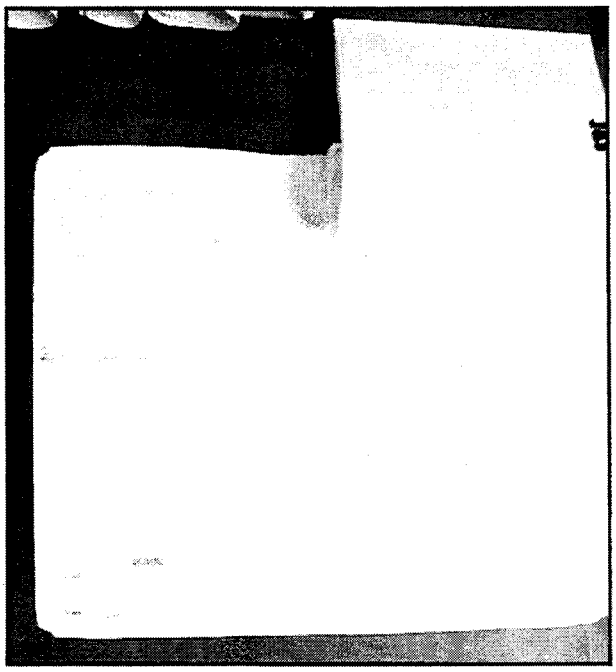
Ordinarily, the acquisition of properties for a federally assisted project does not begin before the completion of the environmental review process. However, in extraordinary cases or emergency situations, an acquiring agency may request that FHWA approve Federal participation in acquiring a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to such completion. The reasons for such requests include the following:

- A request from a property owner alleging an undue hardship caused by the impending project due to his or her inability to sell the property at fair market value within a time period typical for similar properties not affected by the project. Undue hardship, in such cases, means a hardship particular to the owners/parcels in question and not shared in general by all the owners of property to be acquired for the project.
- The acquiring agency's decision to acquire in order to prevent imminent development and the associated increased costs which would tend to limit the choice of highway alternatives.

As noted above, this procedure is to be used only in unusual circumstances, and additional requirements must be met for it to be used. Such requests may be submitted and approved only if:

- The agency has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or,
    - an opportunity for public involvement has been provided;
- the project is included in a currently approved STIP; and
- the agency has documented its determination that the acquisition is in the public interest and is necessary.

Note: Hardship acquisition and protective buying procedures may not be used in connection with properties subject to the provisions of 49 U.S.C. 303, commonly referred to as Section 4(f) [parks] or 16 U.S.C. 470(f) [historic properties], until the required Section 4(f) determinations and the procedures of the Advisory Council on Historic Preservation are completed.



Negotiator Log

Experienced negotiators tell us that a log of conversations and other contacts or interactions between themselves and property owners or their representatives is an essential tool and resource in acquiring real property. As a minimum, it provides the negotiator with an accurate record of communications, thus helping to avoid misunderstandings, hazy recollections, and unnecessary repetition.

One of the functions of a negotiator's log is to document that negotiations have been conducted in an appropriate manner. Beyond the negotiating arena, acquiring agencies increasingly are being required by courts to demonstrate such compliance. Properly completed, the negotiator's log offers key documentation in these cases.

Sometimes the initial negotiator may not complete the negotiations for a particular parcel. Without a complete record of preceding efforts, subsequent negotiations by a new negotiator will be more difficult and probably more time-consuming. In addition, the record contained in the log may assist in determining the prospects for a successful administrative or legal settlement. This supports the Uniform Act's goals of encouraging and expediting agreements with owners, avoiding litigation, relieving congestion in the courts, assuring consistent treatment for owners in public improvement programs, and promoting public confidence in government's land acquisition practices.

The negotiator should maintain adequate records of negotiations or other contacts for every parcel. The negotiator's log or record should be written in permanent form and completed within a reasonable time after each contact with the property owner. Information for each contact should include the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffers, list of reasons settlement could not be reached, and any other pertinent data. The log or report should be signed and dated by the assigned negotiator. Upon completion of negotiations, the above records become part of the project parcel file.

When negotiations are unsuccessful and further attempts to negotiate are considered futile, the negotiator's record should include documentation of the negotiator's recommendations for appropriate future action.

VII. RELOCATION ASSISTANCE

Sometimes land needed for a public project is occupied. In such instances, it may be necessary to displace the occupants, who may include individuals, families, businesses, farms, or even non-profit organizations. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (the Uniform Act), and U.S. DOT/FHWA regulations prescribe certain benefits and protections for persons displaced by public projects funded, at least in part, with Federal money.

Among other benefits, the Uniform Act provides relocation payments for persons displaced from their residences, businesses, farms, or even non-profit organizations. These payments include moving expenses and certain supplements for increased costs at a replacement location. In addition, the Act provides protections for displaced persons such as requiring the availability of replacement housing, minimum standards for such housing, and requirements for notices and informational materials. Also, the Act entitles displaced persons to certain "advisory services" to help them move successfully.

The provisions of the Uniform Act concerning relocation are found in Title II which contains this "Declaration of Policy:"

> **"This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize hardship of displacement on such persons."**

It is important to understand that successful relocation is essential not only to the welfare of those to be displaced but to the progress of the entire highway project.

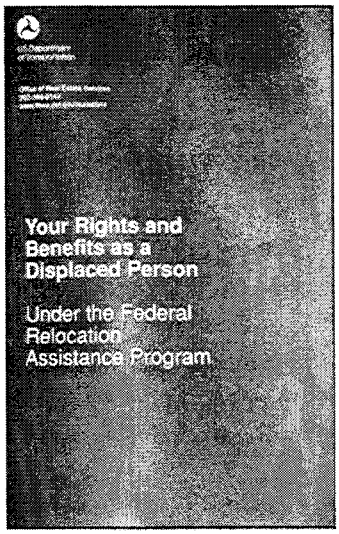
The relocation program consists of four main components: Relocation planning, notices, advisory services, and payments.

Relocation Planning

Successful relocation requires planning. Housing resources must meet the needs of displaced residents in terms of size, price, rental, location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Businesses must be given relocation assistance with a minimum of disruption to operations. Payments must be made to displaced persons at the time they are needed to obtain replacement housing. Often coordination with other displacing programs or agencies is necessary. These things do not happen automatically; they require planning by the agency. Since the relocation of occupants is one of the major potential impacts of any project, the earlier such impacts are considered the easier it will be eventually to deal with any problems encountered. Moreover, early consideration of relocation impacts may influence the alignment eventually chosen for a project. Lastly, if project displacement involves persons with special needs such as the disabled or the elderly, particular attention will have to be given to advisory services.

NOTICES

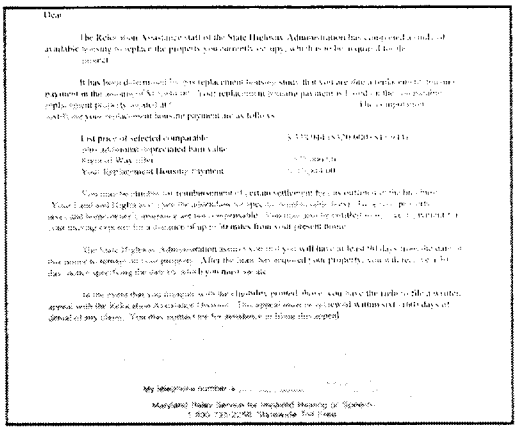
The Uniform Act and the regulations recognize the need of displaced persons for information about the relocation process and require that certain information be provided to them. This information is provided through personal contact and through a series of notices for the purposes of minimizing disruption and maximizing the chances of a successful relocation. The following are the primary notices that must be delivered as part of the program:



http://www.fhwa.dot.gov/realestate/index.htm

1. **General Information Notice.** This notice is to be provided to potential displaced persons at an early stage of the project. It is to be written in easily understood language and, if appropriate, in a foreign language. One common approach is to hand out an informational brochure at the public hearings for the project. The purpose of the notice is to provide a general description of the agency's relocation program, including benefits, responsibilities and protection. Detailed information about the content of this notice may be found in the government-wide (Uniform Act) regulations at 49 CFR 24.203, a copy of which is included in the Appendix.

2. **Notice of Relocation Eligibility.** This notice is provided later in the project when it has been determined that particular persons <u>will be displaced.</u> The trigger for providing this notice is the initiation of negotiations, that is, the date of the first written offer to acquire the real property at which the person is an occupant (residential or non-residential). The notice informs the occupant that he or she will be displaced and, therefore, will be eligible for relocation benefits, as applicable.



3. **90-Day Notice.** The 90-day notice is a basic protection of the Uniform Act. As part of the general information notice described above, the displacing agency must inform potential displaced persons that they will not have to move without at least 90 days' written notice. The 90-day notice, itself, will come later, when the agency's plans for requiring occupants to move have become more precise. At this time (and for residential displacements, only after ensuring that at least one comparable replacement dwelling is available), the agency will inform a person to be displaced, at least 90 days in advance, of the earliest date by which he or she may be required to move. This means, for example, that if the agency believes it may require an occupant to move by July 15, it must inform him or her, in writing, at least 90 days in advance, i.e., April 16. In practice, the agency may not actually require the move until after July 15. Conversely, the occupant may choose to move before that date. In either case, the occupant does not have to move before July 15 and the requirement to provide 90 days' notice has been satisfied.

Some agencies choose an optional method of delivering a 90-day notice. They deliver a 90-day notice which not only meets the requirements described above but also states that they will deliver another notice 30 days prior to the day that the occupant will be required to move.

> Note: It should be noted that there can be exceptions to the 90-day notice requirement, but only for emergency situations involving health, safety, or similar reasons which make a delay of 90 days impracticable. Contact your STD for further information on notice requirements.

Advisory Services

Relocation payments alone often are not enough to minimize the hardship of a move necessitated by a public project and ensure a successful move to a replacement location. Another key element is relocation advisory services. These services provide displaced persons with information, counseling, advice, and encouragement and often require repeated and intense personal contact. A displacing agency should become knowledgeable about the nature of the population its project will impact and plan to provide advisory services accordingly.

A typical advisory services program has a group of services as its core. These basic services, which must be made available to all displaced persons, include:

- Explanation that no person can be required to move from a dwelling for a Federal or federally assisted project unless replacement housing is available to such person.
- Explanation of relocation services and appropriate payments.
- Explanation and discussion of eligibility requirements for each relevant type of relocation payment, and, at an appropriate time, determination of eligibility for each displaced person.
- Determination of the needs and preferences of the person to be displaced. Relocation agents must become familiar with the many different and sometimes special needs of the displaced household or business. **A personal interview is essential to accomplish these objectives.**
- Making every effort to meet identified needs, while recognizing the importance of the displaced persons' priorities and their desire, or lack of desire, for assistance.
- Provision of the following specific types of services, as appropriate:
    * Current listings, including prices or rents, of replacement properties either comparable to acquired dwellings or appropriate for displaced businesses and farms.
    * Transportation for displaced persons to inspect potential relocation housing if they are unable to do so on their own.
    * Information concerning Federal and State housing, disaster loan assistance (when applicable), and other programs offering relocation or related types of assistance.

* Assistance in obtaining and completing applications or claim forms for relocation payment or other related assistance.

In addition, it may be necessary to provide unusual types of assistance to persons with unusual or special needs.

> Note: It is important to know that, in accordance with amendments to the Uniform Act passed in 1997, persons who are aliens not lawfully present in the United States are not eligible, with certain limited exceptions, to receive relocation payments or advisory services.

Relocation Assistance Payments

We have often noted that one of the main purposes of the Uniform Act is to prevent affected persons from bearing an unfair share of the burden of public projects. Such a burden could easily be created if a displaced person were forced to pay increased rent for a replacement apartment or a higher price or interest rate for a replacement home. In order to prevent this, the Uniform Act provides for relocation payments to displaced persons.

There are two main categories of payments, residential and non-residential. Within each category there are several types of payments which address expenses incurred as a result of a required move.

The following provides brief descriptions of the relocation payments available to displaced persons. Each type of payment has its own eligibility criteria and computation requirements, the details of which are beyond the scope of this publication.

> Note: Should your project require the displacement of families, individuals, businesses, farms, or non-profit organizations, we recommend you contact your STD or other persons knowledgeable about the limitations and conditions of these payments and the other complex relocation requirements of the Uniform Act.

Residential Displacements

1. Moving and related expenses. This includes payment for the actual cost to move personal property. A property owner may have a commercial mover move personal property or may elect to move the personal property himself. In addition, the property owner has the option to be paid on the basis of a schedule published by FHWA rather than on the basis of actual costs (a copy of the schedule is available on the FHWA website at **http://www.fhwa.dot.gov/realestate/index.htm**). Often this saves administrative costs for the agency and is advantageous to the owner of the personal property.

2. Replacement housing payment. A payment for the difference, if any, between the actual acquisition price or rent of a comparable replacement dwelling and the acquisition price or rent of the dwelling from which the occupant is being displaced. Additionally, increased mortgage interest costs and selected incidental expenses (settlement costs) also may be eligible.

Replacement Housing Standards

A basic requirement of the Uniform Act is that the replacement housing made available to displaced persons must meet certain standards. These standards are contained in the interrelated concepts of "decent, safe, and sanitary housing" and "comparable replacement housing."

The phrase "decent, safe, and sanitary (DSS)" refers to the physical condition of the replacement dwelling. Basically, a dwelling which meets the standards of a typical local housing or occupancy code and the minimum requirements of the Federal regulation will be DSS. If a community has a more stringent set of housing codes than those found in the government-wide rule at 49 CFR 24.2 (Definitions), ***they*** may be used to determine whether a dwelling is DSS.

The phrase "comparable replacement dwelling" means a dwelling which meets the following criteria:

1. Decent, safe, and sanitary, as described previously.
2. Functionally equivalent to the displacement dwelling.
3. Adequate in size to accommodate the displaced person(s).
4. Located in an area that is:
    - not subject to unreasonable adverse environmental conditions;
    - generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities;
    - reasonably accessible to the displaced person's place of employment.
5. Located on a typical residential site.
6. Currently available to the displaced person(s).
7. Within the financial means of the displaced person(s).

Note: **The regulations require that no person may be required to move from a dwelling unless he or she has been offered an available comparable replacement dwelling.**

In carrying out this requirement, the displacing agency must offer every displaced person at least one comparable replacement dwelling and, if possible, three. This is a crucial part of the displacement process, since the comparable replacement dwelling will form the basis of the computation of the Replacement Housing payment.

Many of the elements of comparable replacement housing deal with the specific needs of displaced persons, e.g., financial means, access to employment, and access to public and commercial facilities. This reemphasizes the critical importance of what was stressed above in the section on Advisory Services — the need for the agency to determine the displaced person's needs and circumstances. This can be accomplished only by personal contact with each displaced household early in the process.

Mobile Homes

Mobile homes present one of the most complex and difficult situations with which displacing agencies must cope. Mobile homes differ from conventional housing in that their status as real or personal property varies from State to State. Also, in a mobile home situation, there is a separation between the dwelling and the site it occupies. For example, one may own a mobile home but rent its site or vice versa.

These differences may present you with two general problems. The first involves a decision you may not have to make with conventional housing — whether to acquire or move the mobile home. The second is a major increase in the complexity of determining the relocation payments for which the displaced person is eligible.

In addition, mobile homes typically will have a disproportionate number of low-income, elderly, and other occupants who are difficult to move successfully. For all these reasons, dealing with mobile home moves will require the maximum in planning, preparation, patience, and assistance.

> Note: If your project might include the displacement of mobile homes, we recommend that you contact your STD for assistance.

Business Displacements

1. Actual moving and related expenses. The cost to move, and, if appropriate, disconnect and reinstall personal property will usually be reimbursable. If a business owner decides not to move personal property, as an alternative he or she may elect to be paid on the basis of actual direct loss of tangible personal property or the cost of substitute personal property. Such alternate payments may not exceed the actual cost to move the items.

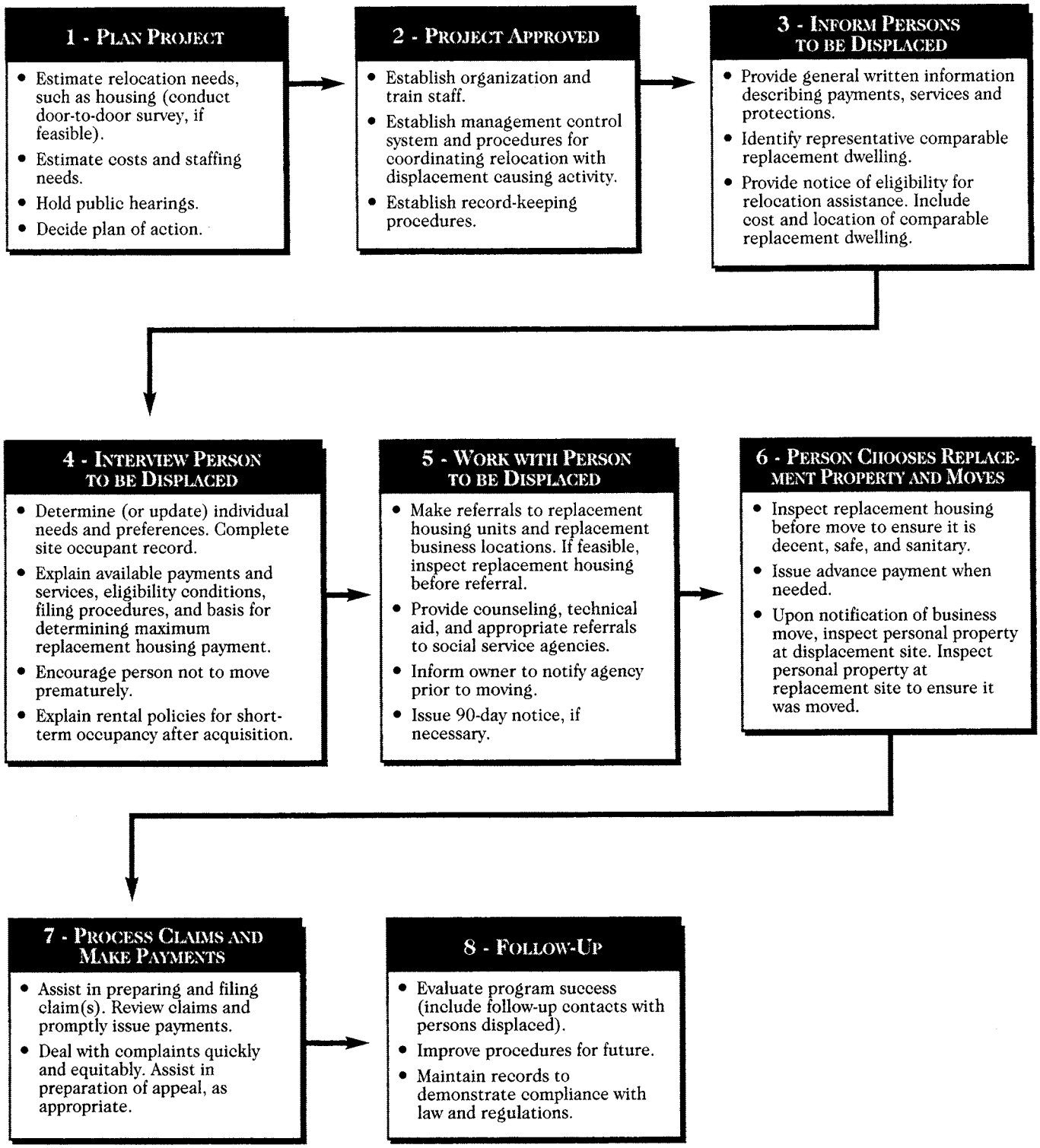
2. Reestablishment expenses. In addition to a payment for moving expenses, the owner of a small business may be eligible for up to $10,000 for reimbursement of eligible expenses associated with the reestablishment of a business at a replacement location.

3. Search costs. A business may be reimbursed for up to $1,000 of expenses incurred in connection with searching for a replacement location.

4. Fixed moving expenses payment. A business may be eligible for a payment of not less than $1,000 and not more than $20,000 in place of an actual moving expense payment. This often is referred to as an "in lieu" payment. The payment amount is based on average annual net earnings of the business. **There are additional eligibility requirements for this payment which are described in the regulations at 49 CFR 24.306.**

> Note: We want to reiterate that if you undertake a federally assisted project requiring the displacement of persons, businesses, farms, or non-profit organizations and you do not have the technical expertise to administer the Relocation Assistance Program, we strongly recommend contacting your STD for assistance.

Typical Relocation Process Under the Uniform Act*



* URA Rules Effective 4/2/89

VIII. PROPERTY MANAGEMENT

Whenever a new highway is built, and often when an existing one is widened or otherwise modified, it is necessary to acquire land for the intended construction. For various reasons, there usually is an interim period between the acquisition of the land and construction. Acquired land and any accompanying improvements are valuable resources which must be protected and often can be productive during this interim. Even after construction is completed, attention must be paid to acquired land to ensure the safe and effective functioning of the highway facility and to protect the public and its investment.

The administration of acquired land and improvements is called property management. It includes activities such as maintenance and protection of the right-of-way, rental or leasing of acquired property, disposal of property no longer needed for the highway, and others discussed later in this chapter. Many of these activities provide opportunities for a State or local government to generate revenue which may be used for highway-related activities.

Photograph provided by Expert House Movers

As a project proceeds from the planning stage through the acquisition of property, the relocation of right-of-way occupants, the construction of the facility, and then to the operation of the completed highway, property management is an ongoing concern. For example, well before negotiations to acquire real property have begun, the acquiring agency should consider and determine whether improvements can be moved so that, if appropriate, it may offer an owner the opportunity to retain and remove them. At the other end of the spectrum, even after construction of the highway is completed, the agency still will have property management responsibilities. Examples include ensuring the safety of the highway by preventing encroachments, protecting access control, disposing of excess land, and renting real estate.

In administering acquired land and improvements, you should be guided by the twin goals of serving the public interest and maximizing public benefit. Keeping these goals in mind is helpful when decisions must be made concerning situations in which the rules are not clear-cut or the circumstances are ambiguous.

For discussion purposes, we have divided property management activities into those which occur before the project is closed out (financially) and those which occur thereafter.

Property Management From Acquisition Through Project Closeout

Administration

As in any activity, proper administration is a minimum requirement. The administration of acquired property includes a number of procedural activities and the records associated with them. In a very real sense, appropriate records are the backbone of the process.

An essential component of the record-keeping process is the property inventory. It is preferable that the property inventory include a record of all real property and improvements acquired for the project. The agency should prepare a pre-acquisition inventory covering every parcel to be acquired, including all land, structures, machinery, equipment, and fixtures. In order to document what is present, the inventory should be updated when physical possession of the real property occurs, and periodically thereafter until all improvements have been disposed of. Disposals of improvements should be noted as they occur.

In addition, the agency should maintain records which provide a proper accounting of expenses and receipts for property leased or rented as well as the disposal of improvements and the payments received.

Another important area involves the maintenance and security of acquired property. As noted above, acquired property is a valuable resource requiring protection from vandalism, encroachment, or other misuse. Even more importantly, the agency must take measures to insure public safety between acquisition and the completion of the highway. Therefore, it is necessary for the agency to inspect the property at appropriate intervals. Additional areas of concern include procedures for hiring contractors (including for the management of real property — see the section on FHWA contracting requirements in Chapter IV, Administrative Matters), the preservation and/or disposal of improvements, and rodent control.

Interim Leasing

If real property is not needed immediately for construction, it may be advantageous for the agency to rent or lease it. This provides revenue to the project and, often, an extra measure of security. Interim leasing is permissible only when the construction schedule permits. Typically, it involves renting property back to previous owners/occupants, which may have the added benefit of assisting with the timing of relocation and/or other project activities. Such properties generally are rented for a short term and the rent charged should be appropriate for short-term occupancy. The Federal share of net income from such leases may be credited to an account and used for Title 23 eligible projects.

Leases should include the following conditions in order to protect the project's/agency's interests in the property:

- Tenant assurances that the rented property will not be transferred, assigned, or conveyed without approval from the acquiring agency.

- Provisions that allow the lease to be revoked if substandard conditions are not corrected within a specified time frame.
- Provisions requiring the tenant to purchase adequate insurance.
- Provisions allowing inspection of the rental property at specific intervals or on an as-needed basis.
- Provisions assuring that the use of the rental property will not interfere with project activities or the eventual intended use of the highway facility.
- Provisions ensuring that those who are not eligible to receive relocation assistance benefits at the initiation of negotiations will not gain eligibility to receive relocation assistance benefits when they are required to move from the rental property.

Right-of-Way Clearance

If structures, utilities, equipment, or other impediments to construction are present on the property to be acquired, they must be cleared before construction may begin. Clearance may be accomplished in a variety of different ways — as part of the construction contract for building the highway, or through a separate demolition/removal contract, owner retention and removal, negotiated sale, auction, or another method. An important aspect of clearing the property is the relocation of occupants which is discussed in greater detail in Chapter VII, Relocation. As a rule, occupants must be relocated before bids for construction of the highway facility may be advertised.

Within a short time following the completion of the highway's construction, the project will be financially closed out. When the highway facility is open to traffic, it enters its operational phase.

Property Management after Project Closeout

Even after the project has been closed out financially, the need for property management continues in order to protect the traveling public and its investment in the highway. This includes functions which occurred during the pre-closeout phase (such as leasing) and some new activities, such as excess property disposal and protection of access control.

Note: Your STD should be contacted for information regarding treatment of revenue.

Post-Closeout Functions

Once a highway facility is open to traffic, decisions about leasing property and preventing inappropriate uses of the right-of-way take on an added dimension. Each use of the right-of-way for other than high-

way purposes must be weighed against the maintenance of highway capacity and safety. Uses which were permissible before operations began may no longer be acceptable.

A number of functions typically occur after closeout. One of these is the disposal of excess property. After the highway has begun operations, it may become clear that some of the property acquired for the highway is not needed currently and will not be needed in the foreseeable future. The agency should maintain an inventory of such "excess properties." Excess property may be disposed of but FHWA policy puts some limitations on the disposal.

If the property is sold to a private party, the acquiring agency must charge a minimum of fair market value, although there can be exceptions for social, economic, or environmental purposes. The Federal share of the sale proceeds (see the section on Cost-Sharing/Credits in Chapter IV, Administrative Matters) may be retained but must be used for activities eligible under Title 23 U.S.C. Highways. However, if a disposal is made to a government entity for public purposes, the disposal may be made without charge.

One special type of disposal involves the disposal of access control, i.e., opening access to the highway facility at a point or points where it has been prohibited. This is a matter with very serious potential implications for the safety and capacity of the highway.

> **Note: If your agency wishes to dispose of access control, you must seek prior approval from your STD.**

Another post-closeout function is the leasing of real property. As in the pre-closeout phase, leasing is a potential source of revenue. The decision to permit leasing is dependent on the agency's determination that it will not interfere with the safety of the traveling public or adversely affect the highway's capacity. You must charge fair market value for leases, but, once again, there can be exceptions for social, economic, or environmental purposes. As with the disposal of excess property, the income from leasing after closeout may be used by your agency for activities eligible under the federal-aid highway program. Once again, prior FHWA approval is required for the leasing of right-of-way on interstate highways.

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NOTES

GLOSSARY

(Moving Cost) Schedule This schedule is used to calculate the amount of reimbursement that displaced persons may be eligible to receive if they decide to move their own personal property. We (FHWA) periodically update and distribute this schedule. A copy can be found on our web site at: **http://www.fhwa.dot.gov/realestate/index.htm**.

30-Day Notice This is a notice that may be given to a person who will be required to move a residence, business or personal property as a result of your agency's project. It informs the person that he or she must move the residence, business or personal property 30 days from the date of the notice. This notice can only be given after you give a 90-day notice.

Access Control Power of Government to restrict/control a property owner's right to create entrances and exits on a public road. After a roadway is designed, built, and in use, there will be instances in which someone will request permission to create a driveway or entrance onto the roadway. These requests require consideration of local access control regulations, potential impacts to the roadway, and safety and capacity (ability of roadway to carry the additional traffic), that a new entrance will create. You should consult with your STD and/or your local engineering staff when considering a request.

Acquisition The process of obtaining right-of-way necessary to construct or support your project.

Actual Moving Expenses The costs that are paid to disconnect, move and reinstall personal property. These costs are usually associated with the move of a business. A complete list of costs eligible for federal reimbursement can be found at 49 CFR 24.303.

Actual Direct Loss of Tangible Personal Property Businesses and farms which move as a result of having their real estate acquired sometimes elect not to move some of their personal property. They may be eligible to receive a payment for this personal property. See 49 CFR 24.303(a)(10) for a complete explanation of how an Actual Direct Loss of Tangible Personal Property payment is calculated.

After Appraisal Part of the appraisal of a property from which only a portion of that property is acquired for the planned project. This type of acquisition is often referred to as a "partial acquisition." That portion which is valued "after" the acquisition is sometimes referred to as the "remainder" or "remaining parcel." The After Value takes into account the effects of the partial acquisition and any effects (negative or positive) that it may have on the value of the remainder.

Alternate Dispute Resolution (ADR) A range of different forums and processes which can be utilized to resolve a dispute. We focus on two forms of ADR in this guide which might be used to negotiate a settlement: administrative settlements and mediation.

Approaches to Value (Cost, Income Capitalization & Sales Comparison) Cost, Income Capitalization and Sales Comparison are the three approaches an appraiser can use to estimate the value of a property.

The Cost approach estimates the value of a property by adding the value of the land plus estimated cost to construct/replace the improvement and then subtracting the estimated amount of depreciation from the current structure.

The Income Capitalization approach estimates a property's capacity to generate income over a period of time and then converts that income into an estimate of the present value of the property.

The Sales Comparison approach estimates the value of a property by comparing similar properties which have sold recently (comparables) and then making adjustments to the sale price of the comparables to account for differing characteristics.

Approved Appraisal An appraisal must be approved by an official of your agency before it can be used as the basis for offering a property owner your agency's estimate of just compensation. The approval process involves having the appraisal reviewed by either a knowledgeable agency official who can then approve the appraisal, or a contract review appraiser who cannot approve the appraisal but can recommend approval to an agency official.

Before Appraisal Part of the appraisal of an affected property which estimates the value of the property as it is before the acquisition. Law and regulations typically require that this estimate of value cannot include any increase or decrease in the value of the property which results from the planned or anticipated project.

Cost of Substitute Personal Property (Relocation Assistance) In some instances a business or farm owner who has to move his or her personal property as a result of your project may decide to replace some items of personal property instead of moving them. The property owner may receive some reimbursement for replacing these items of personal property at the site to which he or she moves. An explanation of how to calculate the reimbursement a property owner is eligible to receive can be found at 49 CFR 24.303(a)(12).

Cost (appraisal approach) Cost, Income Capitalization and Sales Comparison are the three approaches an appraiser can use to estimate the value of a property. The Cost approach estimates the value of a property by adding the value of the land plus estimated cost to construct/replace the improvement and then subtracting the estimated amount of depreciation from the current structure.

Damages In some instances when your agency acquires a part of a person's property, the acquisition, planned use, or construction may cause a loss in value of the remaining property (damages may also extend to adjoining properties in which the property owner has an interest). Normally, the value of the damage is based on a before and after appraisal or on the cost to cure. An owner is entitled to payment of damages and receives this payment as a part of the payment of just compensation.

Disconnect Costs When a business or farm owner has to move his personal property as a result of your project he may be eligible to receive reimbursement for the cost to disconnect, dismantle and remove his personal property. See 49 CFR 24.303(3) for a list of federally reimbursable disconnect costs.

Encroachments A situation which usually occurs when items such as a house, sign or well are discovered to be on your agency's property (right-of-way, etc.) illegally or without permission.

Fair Market Value The price which a willing buyer will pay a willing seller for a piece of real estate. The above definition is only a general definition. You should note that the exact definition of fair market value depends on where (the jurisdiction) the property being bought or sold is located, on state/local case law and on other state/local legal issues.

Federally Assisted Projects A federally assisted project is one which receives Federal reimbursement or payment of some project expenses such as planning, construction, right-of-way acquisition, and property management. As a local public agency you usually receive federal financial assistance from your State Department of Transportation and in some instances directly from the Federal government.

Highest and Best Use The legal use (or development/redevelopment) of a property which makes it most valuable to a buyer or the market.

Incidental Expenses (settlement expenses) This is a reimbursement for some settlement expenses that a residential property owner may receive after he or she buys a dwelling to replace the one that your agency acquired. A complete list of eligible expenses can be found at 49 CFR 24.401(e)(1-9).

Increased Mortgage Interest Costs This is a payment that a residential property owner may be eligible to receive to offset the increased cost of getting a mortgage on a dwelling to replace the dwelling that your agency acquired. An explanation of how to determine if a property owner is eligible to receive this reimbursement and how to calculate the payment can be found at 49 CFR 24.401(d).

Just Compensation The payment (to a property owner) your agency must make in order to acquire property for a federally funded or federally assisted project. The payment includes the value of the real estate acquired and any damages caused to the remainder of the property by the acquisition and/or construction.

Lease A lease is an agreement between a landlord, property owner or property manager and a tenant. The agreement covers issues such as rental amount and length of time the lease is in effect. The rental amount may include or exclude property taxes, garbage pickup fees, utility costs, property maintenance and other expenses.

Local Public Agency Coordinator A number of State Departments of Transportation have appointed someone to act as a contact and coordinator for activities carried out by local public agencies in their state. The coordinator is a focal point for information on applicable laws, rules, regulations, policies and procedures which a local public agency must follow when using Federal funds in any part of a project.

Minimum Qualifications of Appraisers The criteria that an agency uses to determine which appraisers or review appraisers are qualified based on experience, state licenses or state certifications to perform specific appraisal and review assignments. This list is created by your agency or can be obtained from your State Department of Transportation. Additional information on minimum qualifications of appraisers can be found at 49 CFR 24.103(d) – Qualifications of Appraisers.

Minimum Standards A set of requirements which specifies what information must be included in an appraisal report and the formats which are acceptable to use for preparing the appraisal report. Additional information on minimum standards can be found in 49 CFR 24.103(a) – Standards of Appraisal.

Negotiation This is the primary method for acquiring property for your project. It involves explaining items such as details of construction, your agency's offer of just compensation and what just compensation is. A property owner must have these details in order to consider your agency's offer. The negoti-

ation process involves listening to the property owner and determining the best way (negotiated settlement/administrative settlement) to reach an agreement for the sale of property. You should contact your LPA coordinator or STD to determine how the administrative settlement (negotiated settlement) approval process works.

NEPA – National Environmental Policy Act of 1969 (NEPA) NEPA applies to all Federal agencies and most of the activities they manage, regulate or fund that affect the environment. It requires all agencies to disclose and consider the environmental implications of their proposed actions. In most instances Federal aid for local public agency projects is given out by the State (or your STD). If your project will use any federal funds you will have to comply with NEPA requirements. Information on NEPA and Federal Aid project requirements can be found in the regulations at 23 CFR 771 (proposed regulations 23 CFR 1420 will replace 23 CFR 771 if published).

Personal Property In general refers to property that can be moved. It is not permanently attached to, or a part of, the real estate. For example, if your agency purchases a strip of property and that strip has a dog house on it, in most cases the dog house would be personal property. An example of business personal property may be desks and chairs. If you need information or assistance in determining what makes up personal property under your state and local laws you should contact your LPA coordinator or legal council.

Personalty Refers to items which are determined to be personal property.

Preferred Alignment As part of the planning process, an agency identifies a number of project possibilities including no-build and several alternate alignments and then determines which of the possibilities appears to be most feasible. This is usually the agency's preferred alignment. If your agency will use any Federal funds in its project, then it must follow NEPA process requirements in order to determine which alternative will be used by your agency.

Realty Refers to items which are determined to be real property.

Reestablishment Expenses A business, farm or non-profit organization may be eligible to receive reimbursement for some of its expenses related to relocating and reestablishing when it is required to move for a Federally aided project. A list of expenses which are reimbursable can be found at 49 CFR 24.304.

Regulatory (Federal Aid program) This refers to the regulations which tell how the Federal aid highway program is administered. The primary regulations for right-of-way real property acquisition, relocation, appraisal, property management, junkyard control, outdoor advertising and property management are 23 CFR 710, 750, 751 and 49 CFR 24.

Relocation Planning A process for federally aided projects and programs which involves identifying and considering the potential impact created by displacing residences, farms, businesses and non-profit organizations and planning methods to minimize that impact. Information on relocation planning requirements can be found at 49 CFR 24.205.

Statutory (Federal Aid program) This refers to the laws passed by Congress which govern real estate acquisition activities for Federal and Federally assisted programs and projects. The primary statute governing Federal and Federally assisted real estate acquisition activities is the Uniform Act.

Stipulated Settlement In instances in which condemnation proceedings have begun, parties can still negotiate, and in some instances, can agree to a settlement before their case is heard. In order to conclude the negotiation, the parties present the Judge or presiding authority their agreement to settle (which is called a stipulated settlement).

Website (Environmental Justice) http://www.fhwa.dot.gov/environment/ej2.htm

Website (Office of Real Estate Services) http://www.fhwa.dot.gov/realestate/index.htm

[1]Public Law 91-646
91st Congress, S. 1
January 2, 1971

([2]As amended by Public Law 100-17, Apr. 2, 1987, Title IV, Uniform Relocation Act Amendments of 1987.)
([3]As amended by Public Law 102-240, Dec. 18, 1991, Sec. 1055, Relocation Assistance Regulations Relating to the Rural Electrification Administration.)
([4]As amended by Public Law 105-117, Nov 21, 1997, Sec.104; Sec 2, an Alien not lawfully present in the United States.)

Office of Real Estate Services
Federal Highway Administration

AN ACT

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I—GENERAL PROVISIONS

SEC. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, **any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual,** and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) (A) The term "displaced person" means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property-

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in section 101(7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 202(a) and (b) and 205 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include —

(I) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term "comparable replacement dwelling" means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the Department of Transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

EFFECT UPON PROPERTY ACQUISITION

SEC. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

CERTIFICATION

SEC. 103. (a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

(b) (1) The head of the lead agency shall issue regulations to carry out this section.

(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

(c) (1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

DISPLACED PERSONS NOT ELIGIBLE FOR ASSISTANCE

SEC. 104. (a) IN GENERAL- Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States.

(b) DETERMINATIONS OF ELIGIBILITY

(1) PROMULGATION OF REGULATIONS – Not later than 1 year after the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(2) CONTENTS OF REGULATIONS – Regulations promulgated under paragraph (1) shall

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).

(c) EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP – If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible for the assistance but for subsection (a).

(d) LIMITATION ON STATUTORY CONSTRUCTION – Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF FINDINGS AND POLICY

SEC. 201. (a) The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that—

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs born by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (P.L. 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964.

MOVING AND RELATED EXPENSES.

SEC. 202. (a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; **and**

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive **an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.**

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) (1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system; located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the **displacing** agency shall make an additional payment not in excess of **$22,500** to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling **acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.**

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

RELOCATION PLANNING, ASSISTANCE COORDINATION, AND ADVISORY SERVICES

SEC. 205. (a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

(A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

SEC. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

STATE ACTING AS AGENT FOR FEDERAL PROGRAM

SEC. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

PUBLIC WORKS PROGRAMS AND PROJECTS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

SEC. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, **a displacing agency (other than a Federal agency)**, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such **displacing agency** that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, **comparable** replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

FEDERAL SHARE OF COSTS

SEC. 211. (a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. [42 U.S.C. 4631]

ADMINISTRATION—RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

DUTIES OF LEAD AGENCY

SEC. 213. (a) The head of the lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;

(2) ***provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 104;***

(3) ensure that displacing agencies implement section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);

(4) ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

(6) perform such other duties as may be necessary to carry out this Act.

(b) The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration **only with respect to relocation assistance under this title and title I.**

PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

SEC. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law **(except for any Federal law providing low-income housing assistance).**

TRANSFERS OF SURPLUS PROPERTY

SEC. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all **net** amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

REPEALS

SEC. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234).

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).

(5) Section 114 of the Housing Act of 1949 (2 U.S.C. 1465).

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

EFFECTIVE DATE

SEC. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, **except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.**

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

SEC. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b) (1) for the purpose of determining just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner and the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

SEC. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

LITIGATION EXPENSES

SEC. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

SEC. 305. (a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, **an acquiring agency** under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such **acquiring agency** that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

(b) For purposes of this section, the term "acquiring agency" means—

(1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

REPEALS

SEC. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

[1] Original text appears in regular typeface.
[2] **Amended text is displayed in boldface.**
[3] Amended text is in section 213(c) in regular typeface.
[4] ***Amended text is in sections 104 & 2 in bold italics.***

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/realestate/ for the most current copy of the regulations and statutes.

PART 24 – UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

FEDERAL REGULATIONS

Following are revisions to 49 CFR Part 24 effective 6/1/93.

Pages:
- 10 - 24.2 (Definitions) (2)(x)- "Persons not displaced"
- 12 - 24.2 Small Business
- 19 - 24.101(a)(5) (Acquisition Req) New Paragraph
- 23 - 24.103(d) Add (2) Qualifications of Appraisers (FIRREA)
- 40 - 24.304 (Reestablishment Exp) (a); (a)(3); (a)(8);(a)(10); (a)(13); (b)(3)
- 60 - 24.602 (Certification Application) deleted 24.602 (a)(b)(c)(d)(e)
- 61 - 24.603(d) (Monitoring and Corrective Action)

Following are revisions to 49 CFR Part 24 effective 10/1/99.

(A) Section 24.2 - Definitions. The Government Printing Office (GPO) initiated a government-wide reformatting policy that removed all lettering references to the definitions. Definitions are arranged in alphabetical order.

(B) The following changes are a result of Public Law 105-117 - "Aliens not lawfully present in the United States."

Pages:
- 5 - New definition of "Alien not lawfully present in the United States"
- 6 - New definition of "Citizen"
- 10 - Add (xii) under "Persons not displaced"
- 12 - New definition of "State"
- 27 - Sec 24.203 - Ninety-day notice
- 33 - Sec 24.208 - New section on "Aliens not lawfully present in the United States"

PART 24 – UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A — General

Sec.

Authority: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).
[57 FR 33264, July 27, 1992]

Sec. 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

Sec. 24.2 Definitions.

Agency. The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) Acquiring agency. The term "acquiring agency" means a State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of Sec. 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by Sec. 24.4(a)(1) or (2).

(2) Displacing agency. The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) Federal agency. The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) State agency. The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

Alien not lawfully present in the United States. The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General, and

(2) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

Appraisal. The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Business. The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Citizen. The term "citizen," for purposes of this part, includes both citizens of the United States and noncitizen nationals.

Comparable replacement dwelling. The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also Sec. 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at Sec. 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under Sec. 24.404, Replacement housing of last resort.

Contribute materially. The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

Decent, safe, and sanitary dwelling. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weather tight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

Displaced person.

(1) **General.** The term "displaced person" means, except as provided in paragraph (2) of this definition, any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at Secs. 24.401(a) and 24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under Sec. 24.205(c), and moving expenses under Secs. 24.301, 24.302 or 24.303.

(2) **Persons not displaced**. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also Sec. 24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at Sec. 24.101(a) (1) and (2) , or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at Sec. 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at Sec. 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303, except that such owner remains a displaced person for purposes of subpart D of this part; or **[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]**

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in Sec. 24.206.

(xii) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Sec. 24.208.

Dwelling. The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Farm operation. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Federal financial assistance. The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Initiation of negotiations. Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

Lead agency. The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

Mortgage. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Nonprofit organization. The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Notice of intent to acquire or notice of eligibility for relocation assistance. Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

Owner of a dwelling. A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

Person. The term "person" means any individual, family, partnership, corporation, or association.

Program or project. The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

Salvage value. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

Small business. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Sec. 24.304. **[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]**

State. Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

Tenant. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

Uneconomic remnant. The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

Uniform Act. The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

Unlawful occupancy. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

Utility costs. The term "utility costs" means expenses for heat, lights, water and sewer.

Utility facility. The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

Utility relocation. The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

Sec. 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, Sec. 24.3.)

Sec. 24.4 Assurances, monitoring and corrective action.

(a) Assurances.

(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) Monitoring and corrective action. The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see Sec. 24.603, Subpart G.)

(c) Prevention of fraud, waste, and mismanagement. The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

Sec. 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at Sec. 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

Sec. 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

Sec. 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

Sec. 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(i) Executive Order 11246—Equal Employment Opportunity.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

Sec. 24.9 Recordkeeping and reports.

(a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) Confidentiality of records. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) Reports. The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

Sec. 24.10 Appeals.

(a) General. The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) Actions which may be appealed. Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under Sec. 24.106 or Sec. 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) Time limit for initiating appeal. The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) Review of files by person making appeal. The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) Scope of review of appeal. In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) Determination and notification after appeal. Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) Agency official to review appeal. The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B — Real Property Acquisition

Sec.

Sec. 24.101 Applicability of acquisition requirements.

(a) General. The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(5) Acquisition for a program or project which is undertaken by, or receives Federal financial assistance from, the Tennessee Valley Authority or the Rural Electrification Administration.

(b) Less-than-full-fee interest in real property. In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, Sec. 24.101(b).)

(c) Federally-assisted projects. For projects receiving Federal financial assistance, the provisions of Secs. 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See Sec. 24.4(a).)

Sec. 24.102 Basic acquisition policies.

(a) Expeditious acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) Notice to owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also Sec. 24.203.)

(c) Appraisal, waiver thereof, and invitation to owner. (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in Sec. 24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. (2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also Sec. 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) Basic negotiation procedures. The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Sec. 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) Updating offer of just compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) Coercive action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See Sec. 24.2.)

(l) Inverse condemnation. If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) Fair rental. If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

Sec. 24.103 Criteria for appraisals.

(a) Standards of appraisal. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) Influence of the project on just compensation. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at Sec. 24.2) of the retained improvement.

(d) Qualifications of appraisers.

(1) The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to Sec. 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.).

(e) Conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

Sec. 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with Sec. 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

Sec. 24.105 Acquisition of tenant-owned improvements.

(a) Acquisition of improvements. When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) Improvements considered to be real property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) Appraisal and establishment of just compensation for tenant-owned improvements. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, **whichever is greater. (Salvage value is defined at Sec. 24.2.)**

(d) Special conditions. No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) Alternative compensation. Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

Sec. 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

Sec. 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

Sec. 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in Sec. 24.102(c)(2).

Subpart C — General Relocation Requirements

Sec.

Sec. 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

Sec. 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at Sec. 24.2.

Sec. 24.203 Relocation notices.

(a) General information notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Sec. 24.2 for the occupied property.) When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) Ninety-day notice.

(1) General. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) Timing of notice. The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) Content of notice. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See Sec. 24.204(a).)

(4) Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in Sec. 24.208(i).

(5) Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

Sec. 24.204 Availability of comparable replacement dwelling before displacement.

(a) General. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at Sec. 24.2) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) Circumstances permitting waiver. The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) Basic conditions of emergency move. Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

Sec. 24.205 Relocation planning, advisory services, and coordination.

(a) Relocation planning. During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) Loans for planning and preliminary expenses. In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) Relocation assistance advisory services.

(1) General. The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) Services to be provided. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Sec. 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Secs. 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See Sec. 24.2.) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) Coordination of relocation activities. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see Sec. 24.6, Subpart A.)

Sec. 24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

Sec. 24.207 General requirements — claims for relocation payments.

(a) Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) Expeditious payments. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) Advance payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) Time for filing.

(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) Deductions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Sec. 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) Notice of denial of claim. If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

Sec. 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

(d) The displacing agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the displacing agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.

(1) If the agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing agency shall obtain verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the Federal Register in November 17, 1997 at 62 FR 61350. Any request for INS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. [If an agency is unable to contact the INS, it may contact the FHWA in Washington, DC at 202-366-2035 (Marshall Schy, Office of Real Estate Services) or 202-366-1371 (Reid Alsop, Office of Chief Counsel), for a referral to the INS.]

(2) If the agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in Sec. 24.207 of this part.

Sec. 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D — Payments for Moving and Related Expenses

Sec.

Sec. 24.301 Payment for actual reasonable moving and related expenses — residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at Sec. 24.2) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under Sec. 24.305, as the Agency determines to be reasonable and necessary.

Sec. 24.302 Fixed payment for moving expenses — residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under Sec. 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

Sec. 24.303 Payment for actual reasonable moving and related expenses — nonresidential moves.

(a) Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at Sec. 24.2) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at Sec. 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under Sec. 24.305, as the Agency determines to be reasonable and necessary.

(b) Notification and inspection. The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in Sec. 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) Self moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) Transfer of ownership. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) Advertising signs. The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

Sec. 24.304 Reestablishment expenses — nonresidential moves.

In addition to the payments available under Sec. 24.303 of this subpart, a small business, as defined in Sec. 24.2, farm or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.
[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

(b) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially to the household income.
[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

Sec. 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under Sec. 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Sec. 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in Secs. 24.303(a)(3) and 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

Sec. 24.306 Fixed payment for moving expenses — nonresidential moves.

(a) Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by Secs. 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see Sec. 24.2).

(b) Determining the number of businesses. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) Farm operation. A displaced farm operation (defined at Sec. 24.2) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) Nonprofit organization. A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) Average annual net earnings of a business or farm operation. The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

Sec. 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see Sec. 24.2) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, Sec. 24.307.)

Subpart E — Replacement Housing Payments

Sec.

Sec. 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) Eligibility. A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under Sec. 24.204 is met.

(b) Amount of payment. The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also Sec. 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner- occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) Price differential.

(1) Basic computation. The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with Sec. 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) Insurance proceeds. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see Sec. 24.3.)

(4) Owner retention of displacement dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at Sec. 24.2); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, Sec. 24.401(c) (4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) Increased mortgage interest costs. The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) Incidental expenses. The incidental expenses to be paid under paragraph (b)(3) of this section or Sec. 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with Sec. 24.402(b).

Sec. 24.402 Replacement housing payment for 90-day occupants.

(a) Eligibility. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) Rental assistance payment.

(1) Amount of payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also Sec. 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner- occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) Manner of disbursement. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by Sec. 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) Downpayment assistance payment.

(1) Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under

Sec. 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under Sec. 24.401(a) is not eligible for this payment. (See also Appendix A of this part, Sec. 24.402(c).)

(2) Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Sec. 24.403 Additional rules governing replacement housing payments.

(a) Determining cost of comparable replacement dwelling. The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at Sec. 24.2).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Sec. 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) Inspection of replacement dwelling. Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, **and sanitary dwelling as defined at Sec. 24.2**.

(c) Purchase of replacement dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) Occupancy requirements for displacement or replacement dwelling. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) Conversion of payment. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Sec. 24.402(b) is eligible to receive a payment under Sec. 24.401 or 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sec. 24.401 or 24.402(c).

(f) Payment after death. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Sec. 24.404 Replacement housing of last resort.

(a) Determination to provide replacement housing of last resort. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in Sec. 24.401 or Sec. 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(b) Basic rights of persons to be displaced. Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in Sec. 24.401 or Sec. 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, Sec. 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with Sec. 24.2.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under Secs. 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F — Mobile Homes

Sec.

Sec. 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

Sec. 24.502 Moving and related expenses — mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Sec. 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Sec. 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at Sec. 24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under Sec. 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

Sec. 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under Sec. 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at Sec. 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at Sec. 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

Sec. 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under Sec. 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at Sec. 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at Sec. 24.503(a)(3).

Sec. 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) Replacement housing payment based on dwelling and site. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also Sec. 24.403(b).)

(b) Cost of comparable replacement dwelling.

(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under Sec. 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) Initiation of negotiations. If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) Person moves mobile home. If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) Partial acquisition of mobile home park. The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G — Certification

Sec.

Sec. 24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by Sec. 24.4 of this part.

Sec. 24.602 Certification application.

An agency wishing to proceed on the basis of a certification may request an application for certification from the lead agency [Director, Office of Right-of-Way, HRW-1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590]. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.
[58 FR 26070, April 30, 1993, (effective date June 1, 1993)]

Sec. 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) The lead agency may require periodic information or data from affected Federal or state agencies.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24 — Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A — General

Section 24.2 Definitions.

Definition of comparable replacement dwelling. The requirement in Sec. 24.2 that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Paragraph (7) in the definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under Sec. 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Persons not displaced. Paragraph (2)(iv) under this definition recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with Sec. 24.10.

Initiation of negotiations. This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and reports.

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B — Real Property Acquisition

Section 24.101 Applicability of acquisition requirements.

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic acquisition policies.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts. All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for appraisals.

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, Sec. 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with Sec. 24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property. Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses incidental to transfer of title to the agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C — General Relocation Requirements

Section 24.204 Availability of comparable replacement dwelling before displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Sec. 24.204(a) requires that,

"Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General requirements — claims for relocation payments.

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in Sec. 24.303(c).

Subpart D — Payment for Moving and Related Expenses

Section 24.306 Fixed payment for moving expenses — nonresidential moves.

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary utility relocation payments.

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E — Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in Sec. 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in Sec. 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown." The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	Remaining Principal Balance	$50,000
	Monthly Payment (principal and interest)	$458.22
	Interest rate (percent)	7%
New Mortgage:	Interest rate (percent)	10%
	Points	3
	Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10% – $42,010.18

	$50,000.00
	-42,010.18
Increased mortgage interest costs	$ 7,989.82
3 points on $42,010.18	$ 1,260.31
Total buydown necessary to maintain payments at $458.22	$ 9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57($35,000 by $42,010.18 = .8331; $9,250.13 X .83 = $7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement housing payment for 90-day occupants.

The downpayment assistance provisions in Sec. 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum.

This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional rules governing replacement housing payments.

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the Agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement housing of last resort.

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction **with the definition of "owner of a dwelling" at § 24.2(p).** The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Subpart F — Mobile Homes

Section 24.503 Replacement housing payment for 180-day mobile home-owner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under Sec. 24.401 and a replacement housing payment for a site computed under Sec. 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under Sec. 24.401 to assist in the purchase of a replacement site or, under Sec. 24.402, to assist in renting a replacement site.

Uniform Relocation Assistance and Real Property Acquisition Policies Act, Residential Moving Expense and Dislocation Allowance Payment Schedule

Please see our website at **http://www.fhwa.dot.gov/realestate/index.htm** for a current copy of the schedule.

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/realestate/ for the most current copy of the regulations and statutes.

DEPARTMENT OF TRANSPORTATION [4910-22-P]
Federal Highway Administration
23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712, and 713
[FHWA Docket No. FHWA-98-4315]
RIN 2125-AE44
Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the right-of-way regulations for federally assisted transportation programs administered under title 23, United States Code. The FHWA clarifies and reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Conforming revisions are made to several regulatory parts to remove outdated, redundant, and unnecessary content. Also, the regulations are arranged to follow the same sequence as the development and implementation of a Federal-aid project to assist the public and State transportation departments (STDs) in locating regulations applicable to a specific point of interest.

DATES: The final rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ware, (202) 366-2019, Office of Real Estate Services, HEPR-20, or Mr. Reid Alsop, Office of the Chief Counsel, HCC-31, (202) 366-1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's webpage at: http://www.access.gpo.gov/nara.

Background

The FHWA began the process of revising its regulations with an advance notice of proposed rulemaking (ANPRM) published on November 6, 1995 (60 FR 56004). As a first step in the comprehensive revision of the regulations, the FHWA removed obsolete and redundant parts by publishing an interim final rule on April 25, 1996, at 61 FR 18246. This action removed from title 23, CFR, all of parts 720 and 740, and portions of parts 710 and 712. Comments received in response to the ANPRM also identified the need for a comprehensive rewrite of the existing real estate program regulations.

An NPRM, published at 63 FR 71238, on December 24, 1998, proposed to revise the regulations and arrange them to follow the same sequence as the development and implementation of a Federal-aid project and thereby assist the public and State transportation departments in locating regulations applicable to a specific point of interest. The NPRM also proposed to clarify the State-Federal partnership.

The FHWA provides funds to the States and other organizations to reimburse them for the costs they have incurred in constructing highways and other transportation related projects. Regulations dealing with reimbursement and management of right-of-way (ROW) are contained in 23 CFR parts 710 through 713.

Discussion of Comments

ANPRM of November 6, 1995

Twenty comments were received: 2 from individuals, 2 from private groups or organizations, and 16 from STDs.

Based on the responses received, the FHWA concluded that the (ROW) regulations needed a comprehensive revision. During an initial review, the FHWA identified several parts of the regulations that were no longer needed.

NPRM of December 24, 1998

Twenty-eight comments were received in response to the December 24, 1998, NPRM. Comments were received from 25 States, one non-profit organization, a law firm representing five States, one individual, and a subcommittee of a right-of-way organization. The FHWA gratefully acknowledges the effort required to provide comprehensive comments, endorsements, and recommendations relating to the regulation.

Most commenters strongly supported the need to reorganize the regulations. A couple of comments noted that the regulations should not be reorganized and that reorganization could mean additional work for some States which had provided cross references by section number to the FHWA regulations. It was concluded that the advantages of completing a comprehensive rewrite of regulations which are nearly 25 years old outweighed the time and expense of changing cross references. Since the new regulations provide significant revisions, the text of State right-of-way manuals would require some revision in any event.

The NPRM proposed that Federal funds be allowed to participate in all costs necessitated by State law. Most commenters stated that they welcomed the reduction in Federal involvement in State matters and that since State laws varied widely, it made sense to reimburse based on actual State expenditures. Some commenters believed that allowing Federal reimbursement of costs not previously permitted would encourage State legislatures and courts to expand both property damage payments and costs of acquisition, such as, payments of property owners legal fees, court costs, and perhaps loss of business costs. In developing the final rule, the FHWA concluded that neither the FHWA nor STDs may have sufficient resources to monitor a wide variety of State laws and court decisions and that an across-the-board reimbursement of State expenditures required by State law is the most practical and equitable solution.

As the comment of the Vermont STD correctly noted, business loss can partially overlap "damages" and there is great difficulty trying to isolate and separate items in which the FHWA could not previously participate versus items where participation was permitted. Court awards most often do not clearly separate the various elements of damages making it difficult to isolate historically "noncompensable" damages.

Several comments were received suggesting that specific wording should be revised to more closely mirror language used by individual States. In completing the final rule, the FHWA selected language which it believes is best understood and utilized by the majority of the States. Nuances in language can be accommodated in the State procedural manual.

Several comments were received that questioned the procedures for receiving either credit or reimbursement for early acquisitions. These comments typically reflected that the reader believed that the FHWA was too restrictive, and that there should be no impediment to States moving forward to acquire right-of-way and receive reimbursement or credit at a subsequent date. There were also comments that FHWA should advance Federal funds for use in corridor preservation.

At the present time the FHWA believes that TEA-21 offers a great deal of flexibility in considering early acquisition in selected situations. The FHWA was aware of the statutory requirements which must be met in order to obtain either credit or reimbursement at a later date, as well as, lawsuits which have challenged early acquisition approaches and has adopted an approach which it considers prudent, and cautious, while fully implementing the intent of TEA-21. As additional experience is gained in the application of the TEA-21 principles, the FHWA will update the web page for "Questions and Answers" which will be developed continually to facilitate implementation of early acquisition concepts.

A limited number of comments were received questioning the FHWA's determination under the Unfunded Mandates Reform Act that the proposed regulation would result in estimated annual costs of less than $100 million. The regulation as developed should result in a reduction of costs to State, local, or tribal governments since they will not have to maintain staff to conduct surveillance to identify claims for elements of property damage that are not eligible for Federal reimbursement under the old regulation. The reduction in Federal approval actions should also result in cost savings by eliminating the time requirements for such approval.

The final rule also permits reimbursement to States for property acquisition costs and administrative costs which are not now reimbursed, so it is a benefit to those States.

A comment was received questioning the need for a reversionary clause when property is transferred at no cost by an STD to be used for public purposes under title 23, U.S.C. The FHWA concluded that where property to be used for public purposes is transferred at no cost, good stewardship and recognition of the public trust dictates that the property be placed in the use for which the disposal was approved. The reversionary clause is the most effective method to assure that use.

One comment was received concerning the need to insure that FHWA approval is required for the disposal of property at nominal or no costs in exceptional circumstances. Several comments were received suggesting that no FHWA approval for any disposal should be mandated. The requirement for FHWA approval is based on the requirements of 23 U.S.C. 156(b) and remains in the final rule. The rule's intent is that disposals for less than fair market value are to be the exception, rather than the rule. Language has been added encouraging that the criteria for disposals at less than fair market value be clearly stated in the STD manuals.

It is our intent to maintain current program guidance and information in an electronic format with "Questions and Answers" and policy interpretations. Technical air space guidance will also be maintained in this manner. The URL for up-to-date guidance is: http://www.fhwa.dot.gov/realestate/index.htm. This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. The adoption of these regulatory changes impacts other parts of 23 CFR, and in developing the final rule, attention has been given to conforming revisions as necessary. Such other parts include: 23 CFR 130, Subpart D, Advance right-of-way revolving funds; 23 CFR 480, Use and disposition of property previously acquired by States for withdrawn Interstate segments; 23 CFR 620, Subpart B, Relinquishment of highway facilities; 23 CFR 630; 23 CFR 635; and 23 CFR 645.

This final rule substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule. A unified purpose and applicability statement along with definitions is included in part 710, subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

The following table highlights the reordering of the content and intended revisions and redesignations for each subpart of the existing regulation:

Old Part, Subpart or Section	New Part, Subpart or Section
Part 130, subpart D	Removed.
Part 480	Removed.
620.202	620.202 [Revised].
620.203(j)	620.203(j) [Revised].
630.106(c)(3)	630.106(c)(3) [Revised].
635.307(b)(3)	635.307(b)(3) [Revised].
645.103(c),645.111(c) and (d), and 645.113(i)	645.103(c), 645,111(c) and (d), and 645.113(i) [Revised].
710, subpart A [Reserved]	710, subpart A [Added].
710, subpart B (§§ 710.201-710.205)	710.201.
710, subpart C (710.301-710.306)	710.203.
712, subpart A [Reserved]	Removed.
712, subpart B (712.201-712.204)	710, subpart C.
712, subpart C [Reserved]	Removed.
712, subpart D (712.401-712.408)	710.105, 710.203.
712, subpart F (712.601-712.606)	710.509.
712, subpart G (712.701-712.703)	Removed.
713, subpart A (713.101-713.103)	710.101-710.103.
713, subpart B (713.201-713.205)	710.405.
713, subpart C (713.301-713.308)	710.407-710.409.

Part and Section Analysis

Part 130, Subpart D—Advance Right-of-Way Revolving Funds

Part 130, subpart D is removed from title 23, CFR, because section 1211 (e) of the TEA-21 eliminated the right-of-way revolving fund.

Part 480—Use and Disposition of Property Previously Acquired by States for Withdrawn Interstate Segments

Part 480 is removed from title 23, CFR, since section 1303 of the TEA-21 now allows States to retain the proceeds for the lease or sale of real estate on Federal projects as long as the proceeds are used for title 23, U.S.C., type projects. Other provisions of part 480 are obsolete.

Part 620, Subpart B—Relinquishment of Highway Facilities

Part 620 is amended to clarify that it is applicable only to transfers of highway facilities for continued highway use. Approvals for other disposals and modifications of access are governed by 23 CFR part 710.

Section 630.106(c)(3)

In § 630.106(c)(3), the reference to "23 CFR part 712" is revised to read "23 CFR part 710" to provide a current reference.

Section 635.307(b)(3)

In § 635.307(b)(3), the reference to "23 CFR 713, subpart A" is revised to read "23 CFR 710.403" to provide a current citation.

Part 645 Utilities

Sections 645.103(c) and 645.111(c) and (d) are amended to revise the reference "23 CFR chapter I, subchapter H, Right-of-Way and Environment" to read "23 CFR 710.203." Section 645.113(i) is amended to revise the reference "23 CFR part 712, the Acquisition Functions" to read "23 CFR 710.503."

Parts 710— Right-of-Way – General; 712—The Acquisition Function; and 713— Right-of-Way – The Property Management Function

Parts 710, 712, and 713 are removed in their entirety, and replaced by six new subparts under a new part 710. The reorganization includes: subpart A—General; subpart B—Program Administration; subpart C—Project Development; subpart D—Real Property Management; subpart E—Property Acquisition Alternatives; and subpart F—Federal Assistance Programs. These new sections clarify the purpose of the regulation and include a new definition section. Detailed requirements and rules have been replaced by a provision that will allow States to include their acquisition process in a State manual to be approved by the FHWA.

This final rule seeks to further clarify and reduce Federal regulatory requirements and to place primary responsibility for a number of approval actions at the State level. It substantially revises the order of regulatory materials and completes the process of removing redundant, outdated, and unnecessary content from the existing rule.

Part 710, Subpart A—General

A unified purpose and applicability statement along with definitions is included in subpart A of this final rule. This consolidates material now found in several locations of the existing regulations.

Part 710, Subpart B— Program Administration

Section 710.201 clarifies that the STD has the overall responsibility to assure compliance with State and Federal laws and regulations. The methods and practices of the STDs are to be specified in ROW operations manuals submitted for approval by the FHWA no later than January 1, 2001, and certified as current every five years thereafter.

State ROW manuals are considered to be a sound basis for implementing appropriate procedures at the State and local level. It is a State responsibility to maintain the manual and complete the various right-of-way phases in accordance with Federal law and regulations. The manual provides a documented reference for use by State ROW personnel, local public agencies, affected individuals, and the FHWA. Alternative methods to achieve program objectives have been explored in developing this final rule, specifically, efforts were made to reduce the level of Federal oversight, required recordkeeping, and

mandated reporting. The FHWA believes that the need for project level surveillance has diminished since the era of the Interstate program when Federal funding was allocated on the basis of the cost to complete the system. Now States receive a fixed allocation of Federal funds based largely on formula. Hence, it is clearly in the States' best interest to use their Federal-aid funds prudently in all areas, including the acquisition, management, and disposition of real property.

Section 710.203(b)(1) expands Federal reimbursement for right-of-way acquisition costs beyond the current limit of "generally compensable" costs. Under former regulations, the States and the Federal government were required to ascertain which types of acquisition costs were generally compensable across the nation and limit Federal reimbursement to those activities. This limits State flexibility, imposes a "one size fits all" philosophy, and creates administrative burdens for both the States and the FHWA. State and Federal staff time devoted to isolating and extracting these costs does not add value to the overall transportation program accomplishments. Moreover, States should have greater discretion in determining the best use of formula-allocated Federal funds for acquisition purposes, as they now have in virtually every other aspect of projects funded with Federal-aid.

Since 1991, the kinds of activities that are eligible for Federal-aid funds have greatly increased, and States have received greatly expanded discretion in the use of Federal-aid funds. This final rule echoes statutory and policy changes that have occurred throughout the rest of the Federal-aid program for the surface transportation program.

Part 710 Subpart C– Project Development

The sections in this subpart were taken from part 712, subpart B and revised to provide a brief chronology of the sequence and actions which are necessary to qualify for Federal-aid funding. Section 710.305 provides new agency requirements mandating that in areas in which Clean Air Act conformity determination has lapsed, special coordination is necessary prior to initiating new projects or continuing activity on existing projects. Section 710.311 includes a new TEA-21 provision which provides that an oversight agreement between the STD and the FHWA must specify responsibility for the review of projects at the plan, specification, and estimate (PS&E) stage.

Part 710, Subpart D—Real Property Management

The sections in this subpart were taken from part 712, subpart B and revised to provide that the STD will charge fair market value for the use or disposal of real estate acquired with title 23, U.S.C., funding. Exceptions to the requirement to collect fair market value or rent may be approved by the FHWA. The air rights guidelines are to be maintained on the Internet. The STD may retain the Federal share of rental and disposal proceeds if used for projects eligible under title 23, U.S.C.

Section 710.401 provides that property disposals or any other use of right-of-way along the Interstate requires the STD to obtain FHWA concurrence, but this would no longer be required for non-Interstate highways. Instead, the STD ROW manual would specify procedures for the leasing, maintenance and disposal of property rights, including access control.

Section 710.403(e) of the final rule includes a TEA-21 provision that the Federal share of proceeds from the sale or lease of real estate originally acquired as part of a Federal-aid project (not limited to airspace) could be retained by the STD, if used for projects that would be eligible for funding under title 23, U.S.C. Section 710.403(d) of the final rule requires that, with certain exceptions, the STD charge fair market value for the sale or lease of real property if the property was acquired with Federal assistance made available from the highway trust fund. This reflects the provision of 23 U.S.C. 156, as amended by section 1303 of TEA-21. This revision reduces administrative burdens on States and the FHWA and gives States and local governments greater flexibility in use of funds, while also protecting Federal interests by ensuring funds are used on purposes permitted under title 23, U.S.C. This procedure applies to all disposals, including surplus property from withdrawn Interstate projects, processed subsequent to June 9, 1998, the effective date of TEA-21. Under the rule, income from all property uses and dispositions is treated in a uniform manner.

The final rule in § 710.405 continues to specify procedures the States will be required to follow in use of airspace on the Interstate facilities which have received funding under title 23, U.S.C., in any way. However, these airspace requirements will no longer be mandated for non-Interstate highways.

The final rule in § 710.405 relocates a significant amount of detail relating to the management of airspace. The detailed provisions for airspace, particularly the detailed geometric requirements for the use of property over or under a highway, will be developed and updated through an airspace technical guidance document. An advantage of an airspace technical guidance document is that it is easier to update.

Part 710, Subpart E—Property Acquisition Alternatives

The sections in this subpart were taken from part 712, subparts E and F. Subpart G relating to the right-of-way revolving fund is removed since TEA-21 eliminated the revolving fund.

The final rule in § 710.501 also includes a TEA-21 provision (section 1301) that the value of property acquired by State or local governments before project agreement could be credited toward the State share of project cost, as long as certain conditions, including those relating to the environmental process, have been met. Prior to TEA-21, private property donated to a Federal project could be credited to the non-Federal share, but no such credit was permitted for publicly-owned property. The regulation fulfills TEA-21 statutory provisions by allowing a State credit toward the non-Federal share of the cost of a project, and mandating the credit in the case of locally-owned property. The conditions which must be met to allow the credit would include careful observance of the environmental process.

As a basis for protective buying, significant increased cost may be used as a justification under § 710.503(b).

The final rule in §§ 710.505 and 710.507 contains separate sections for property donations by private parties and contributions by State or local governments to clearly distinguish between these distinct actions, both of which can generate credits for the State or local matching share of a project.

The final rule in § 710.513(b) clarifies that where property is to be used for environmental mitigation or environmental banking, the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91-645, 84 Stat. 1894, as amended) apply in the acquisition of the property.

In general, FHWA approval actions in § 710.409 and 710.405 for disposal of property and use of air space were revised in the final rule to more closely parallel the assumptions of responsibilities principles, as outlined in section 1305 of TEA-21 to stress FHWA approval actions on the Interstate system.

Part 710, Subpart F—Federal Assistance Programs

Sections 710.601 and 710.603 were taken from part 712, subpart F and revised to provide updated references to new legislation and to conform the regulatory references to this final rule.

Part 712—The Acquisition Function

Part 712 is removed from title 23, CFR. The provisions of current part 712, subpart B, concerning general provisions and project procedures are relocated and revised as new part 710, subpart C, project development.

We are removing current part 712, subparts A and C (empty reserved slots) and G, right-of-way revolving fund. Subpart G was eliminated by section 1211(e) of the TEA-21. The revolving fund was a pool of money that could be used by States to acquire right-of-way in advance of the time that State funding was available.

The information in current part 712, subpart D regarding administrative and legal settlements and court awards is relocated to new §§ 710.105 (Definitions) and 710.203 (Funding and reimbursement).

Federal land transfers and direct Federal acquisition policies and procedures found in current part 712, subpart E are relocated to new part 710, subpart F (Federal assistance programs), §§ 710.601 and 710.603.

Current part 712, subpart F, concerning functional replacement of real property in public ownership is relocated to new part 710, subpart E, specifically § 710.509.

A major objective of the final rule is to reorder the regulation so that it follows the same sequence as the development and implementation of a Federal-aid project. This rearrangement in chronological order should aid the public and State transportation departments (STD) in effectively using the regulation.

The final rule also clarifies the State-Federal partnership, which is not considered a major or significant change.

Part 713—Right-of-Way—The Property Management Function

Part 713 is removed from title 23, CFR. Current subpart A concerning purpose, applicability, policies and procedures of property management are relocated to new part 710, subpart A (§§ 710.101 and 710.103) and included in the general statement for real property.

Current part 713, subpart B regarding management of airspace on Federal-aid highway systems for non-highway purposes is relocated to new part 710 at § 710.405 (air rights on the Interstate). The FHWA approval for the use of airspace is limited to Interstate projects. Disposal of rights-of-way provisions found in current part 713, subpart C are relocated to new part 710, subpart D (real property management) at §§ 710.407 (leasing) and 710.409 (disposals). This section clarifies that income received by the STDs may be retained when used for projects eligible under title 23, U.S.C.

Provisions relating to the real estate issues contained in sections 1301 and 1303 of the TEA-21 have been incorporated into these regulations, notably: (1) Allowing credit to the non-Federal share when a State or local government contributes land to a project; (2) allowing States to retain income from sale or lease of real property, as long as the income is used for projects eligible under title 23, U.S.C.; and (3) eliminating the right-of-way revolving fund and clarifying credit for private property donations.

Rulemaking Analyses and Notices

All comments received before the close of business on March 24, 1999, were considered in developing the final rule and late comments were considered to the extent practicable. The comments are available for examination using docket number FHWA 98-4315 in the docket room at the above address or via the electronic addresses provided above.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be significant because these regulations simplify, clarify, reorganize, and/or eliminate existing requirements. The procedures would simply implement current law and eliminate constraints on FHWA reimbursement for certain right-of-way expenditures when those expenditures are made under provisions of State law. Neither the individual nor cumulative impact of this action is significant because this rule does not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA-21.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency has evaluated the effects of this rule on small entities, such as local agencies and businesses. This action would merely update and clarify existing procedures. Also, this rule reduces Federal regulatory requirements and allows State procedures to be utilized. Local entities could also adopt State procedures for advancing Federal-aid projects under the State transportation plan. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and concludes that this action will not have any effect on the quality of the human and natural environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C.1531 et seq.).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 49 U.S.C. 3501-3520, Federal agencies must determine whether requirements contained in rulemaking are subject to the information collection provisions of the PRA.

The FHWA has determined that this final rule places a requirement on the STDs, for Right-of-Way Manuals, that requires Office of Management and Budget (OMB) approval.

The FHWA is allowing STDs to develop and submit the manuals by January 1, 2001. The FHWA estimates the annual burden of this requirement is approximately 4,000 hours on a national basis.

A request for OMB approval of the manual requirement will be submitted in the near future.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/realestate/ for the most current copy of the regulations and statutes.

List of Subjects

23 CFR Part 130

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 480

Grant programs—transportation, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way, Reporting and recordkeeping requirements.

23 CFR Part 620

Grant programs — transportation, Highways and roads, Rights-of-way.

23 CFR Part 630

Government contracts, Grant programs — transportation, Highways and roads, Project authorization, Reporting and recordkeeping requirements.

23 CFR Part 635

Grant programs—transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements.

23 CFR Part 645

Grant programs—transportation, Highways and roads, Rights-of-way, Utilities.

23 CFR Parts 710, 712, and 713

Grant programs—transportation, Highways and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 107, 108, 111, and 315, the FHWA amends 23 CFR chapter I as set forth below:

PART 130 — [Removed]

1. Remove part 130.

PART 480 — [Removed]

2. Remove part 480.

PART 620 — [Amended]

3. The authority citation for part 620 continues to read as follows:
Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48; and 23 CFR 1.32.

4. Revise § 620.202 to read as follows:

§ 620.202 Applicability.

The provisions of this section apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project. The provisions of this section apply only to relinquishment of facilities for continued highway purposes. Other real property disposals and modifications or disposal of access rights are governed by the requirements of 23 CFR part 710.

5. Revise § 620.203(j) to read as follows:

§ 620.203 Procedures.

* * * * *

(j) If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the STD may retain the Federal share of the proceeds if used for projects eligible under title 23, U.S.C.

PART 630 — [Amended]

6. Revise the authority citation for part 630 to read as follows:
Authority: 23 U.S.C. 105, 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49CFR1.48(b).

§ 630.106 — [Amended]

7. Amend § 630.106(c)(3) by replacing the citation "23 CFR part 712" with "23 CFR part 710".

PART 635 — [Amended]

8. Revise the authority citation for part 635 to read as follows:
Authority: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 et seq.; sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b)

§ 635.307 — [Amended]

9. Amend § 635.307(b)(3) by replacing the citation "23 CFR part 713, subpart A" with "23 CFR 710.403".

PART 645 — [Amended]

10. The authority citation for part 645 continues to read as follows:
Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§§ 645.103, 645.111, and 645.113 — [Amended]

11. Amend §§ 645.103(c) and 645.111(c) and (d) by replacing the words "23 CFR chapter 1, subchapter H, Right-of-Way and Environment" with the words "23 CFR 710.203"; and amend § 645.113 (i) by replacing the words "23 CFR part 712, the Acquisition Functions" with the citation "23 CFR 710.503".

PART 712 — [Removed]

12. Remove part 712.

PART 713 — [Removed]

13. Remove part 713.

14. Revise part 710 to read as follows:

PART 710 — RIGHT-OF-WAY AND REAL ESTATE

Subpart A — General

Sec.

Subpart B — Program Administration

Sec.

Subpart C — Project Development

Sec.

Subpart D — Real Property Management

Sec.

Subpart E — Property Acquisition Alternatives

Sec.

Subpart F — Federal Assistance Programs

Sec.

AUTHORITY: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

Subpart A — General

§ 710.101 Purpose.

The primary purpose of these requirements is to ensure the prudent use of Federal funds under title 23, U.S.C., in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

This part applies whenever Federal assistance under title 23, U.S.C., is used. The regulation applies to programs administered by the Federal Highway Administration. Where Federal funds are transferred to other Federal agencies to administer, those agencies' procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate services website: http://www.fhwa.dot.gov/realestate/index.htm

§ 710.105 Definitions.

(a) Terms defined in 49 CFR part 24, and 23 CFR part 1 have the same meaning where used in this part, except as modified herein.

(b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23, U.S.C., purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights means real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

Disposal means the sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23, U.S.C.

Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property by State or local govern-ments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

NHS means the National Highway System as defined in 23 U.S.C. 103(b).

Oversight agreement means the project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 U.S.C. 106(c)(3).

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Relinquishment means the conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23, U.S.C.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An administrative settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A legal settlement is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A court settlement or court award is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

State agency means a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State transportation department (STD) means the State highway department, transportation department, or other State transportation agency or commission to which title 23, U.S.C., funds are apportioned.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR part 24.

Subpart B — Program Administration

§ 710.201 State responsibilities.

(a) Organization. Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.

(b) Program oversight. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

(c) Right-of-way (ROW) operations manual. Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:

(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.

(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) Compliance responsibility. The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.

(e) Adequacy of real property interest. The real property interest acquired for all Federal-aid projects funded pursuant to title 23, U.S.C., shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

(f) Recordkeeping. The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either:

(i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or

(ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

(2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.

(g) Procurement. Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.

(h) Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

(i) Approval actions. Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.

(j) Approval of just compensation. The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.

(k) Description of acquisition process. The STD shall provide persons affected by projects or acquisitions advanced under title 23, U.S.C., with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.

§ 710.203 Funding and reimbursement.

(a) General conditions. The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The State has executed a project agreement;

(3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) clearance, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and

(4) Costs have been incurred in conformance with State and Federal law requirements.

(b) Direct eligible costs. Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:

(1) Real property acquisition. Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right-of-way plan preparation, title work, and similar necessary right-of-way related work.

(iii) The cost to acquire real property, including incidental expenses.

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.

(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.

(2) Relocation assistance and payments. Payments made incidental to and associated with the displacement from acquired property under 49 CFR part 24.

(3) Damages. The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.

(4) Property management. The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.
(5) Payroll-related expenses and technical guidance. Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87. This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.
(6) Property not incorporated into a project funded under title 23,U.S.C. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:
(i) General. Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.
(ii) Easements not incorporated into the right-of-way. The cost of acquiring easements outside the right-of-way for permanent or temporary use.
(7) Uneconomic remnants. The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.
(8) Access rights. Payment for full or partial control of access on an existing highway (i.e., one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.
(9) Utility and railroad property.
(i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR 646, Subpart B, Railroad-Highway Projects.
(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.
(c) Withholding payment. The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.
(d) Indirect costs. Indirect costs may be claimed under the provisions of OMB Circular A-87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA.

Subpart C — Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process are provided in this subpart.

§ 710.303 Planning.

State and local governments conduct metropolitan and statewide planning to develop coordinated, financially constrained system plans to meet transportation needs for local and statewide systems, under FHWA's planning regulations contained in 23 CFR part 450. In addition, air quality non-attainment areas must meet the requirements of the U.S. EPA Transportation conformity regulations (40 CFR parts 51 and 93). Projects must be included in an approved State Transportation Improvement Program (STIP) in order to be eligible for Federal-aid funding.

§ 710.305 Environmental analysis.

The National Environmental Policy Act (NEPA) process, as described in FHWA's NEPA regulations in 23 CFR part 771, normally must be conducted and concluded with a record of decision (ROD) or equivalent before Federal funds can be placed under agreement for acquisition of right-of-way. Where applicable, a State also must complete Clean Air Act (42 U.S.C. 7401 et seq.) project level conformity analysis. In areas in which the Clean Air Act conformity determination has lapsed, acquiring agencies must coordinate with Federal Highway Administration for special instructions prior to initiating new projects or continuing activity on existing projects. At the time of processing an environmental document, a State may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501, are satisfied.

§ 710.307 Project agreement.

As a condition of Federal-aid, the STD shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisitions, including hardship acquisition and protective buying (see 23 CFR 710.503). The STD must prepare a project agreement in accordance with 23 CFR part 630, subpart C. The agreement shall be based on an acceptable estimate for the cost of acquisition. On projects where the initial project agreement was executed after June 9, 1998, a State may request credit toward the non-Federal share, for early acquisitions, donations, or other contributions applied to the project provided conditions in 23 U.S.C. 323 and 23 CFR 710.501, are satisfied.

§ 710.309 Acquisition.

The process of acquiring real property includes appraisal, appraisal review, establishing just compensation, negotiations, administrative and legal settlements, and condemnation. The State shall conduct acquisition and related relocation activities in accordance with 49 CFR part 24.

§ 710.311 Construction advertising.

The State must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. On Interstate projects, prior to advertising for construction, the State shall develop ROW availability statements and certifications related to project acquisitions as required by 23 CFR 635.309. For non-Interstate projects, the oversight agreement must specify responsibility for the review and approval of the ROW availability statements and certifications. Generally, for non-NHS projects, the State has full responsibility for determining that right-of-way is available for construction.

Subpart D —Real Property Management

§ 710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the STD shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23, U.S.C., funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§ 710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.
(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23, U.S.C., funding, except as provided below. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23, U.S.C.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23, U.S.C. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

§ 710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23, U.S.C., assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal- aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: http://www.fhwa.dot.gov/realestate/index.htm.

§ 710.407 Leasing.

(a) Leasing of real property acquired with title 23, U.S.C., funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§ 710.409 Disposals.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(c).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

Subpart E — Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) Real property acquisition. The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) Eligible costs. Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

(1) The property was lawfully obtained by the State;
(2) The property was not land described in 23 U.S.C. 138;
(3) The property was acquired in accordance with the provisions of 49 CFR part 24;
(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d-2000d-4);
(5) The State determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
(i) The decision on need to construct the project;
(ii) The consideration of alternatives; and
(iii) The selection of the design or location; and
(6) The property will be incorporated into a Federal-aid project.
(7) The original project agreement covering the project was executed on or after June 9, 1998.

(c) Reimbursement. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the STD to demonstrate that:
(1) Prior to acquisition, the STD made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
(2) The STD obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b)(5) of this section regarding the NEPA process.

§ 710.503 Protective buying and hardship acquisition.

(a) General conditions. Prior to the STD obtaining final environmental approval, the STD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:
(1) The project is included in the currently approved STIP;
(2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and
(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) Protective buying. The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) Hardship acquisitions. The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:
(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and
(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) Environmental decisions. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

§ 710.505 Real property donations.

(a) Donations of property being acquired. A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the STD. Prior to accepting the property, the owner must be informed by the agency of his/her right to receive just compensation for the property. The owner shall also be informed of his/her right to an appraisal of the property by a qualified appraiser, unless the STD determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at no more than $2500, or the State appraisal waiver limit approved by the FHWA, whichever is greater. All donations of property received prior to the approval of the NEPA document must meet environmental requirements as specified in 23 U.S.C. 323(d).

(b) Credit for donations. Donations of real property may be credited to the State's matching share of the project. Credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. Donations may be made at anytime during the development of a project. The STD shall develop sufficient documentation to indicate compliance with paragraph (a) of this section and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) Donations and conveyances in exchange for construction features or services. A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) General. Real property owned by State and local governments incorporated within a federally funded project can be used as a credit toward the State matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement.

(b) Effective date. Credits can be applied to projects where the initial project agreement is executed after June 9, 1998.

(c) Exemptions. Credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

(d) State contributions. Real property acquired with State funds and required for federally-assisted projects may support a credit toward the non-Federal share of project costs. The STD must prepare documentation supporting all credits including:
(1) A certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and
(2) Justification of the value of credit applied. Acquisition costs incurred by the State to acquire title can be used as justification for the value of the real property.

(e) Credit for local government contributions. A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The STD shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b), and that documentation justifies the amount of the credit.

§ 710.509 Functional replacement of real property in public ownership.

(a) General. When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

(b) Federal participation. Federal-aid funds may participate in functional replacement costs only if:
(1) Functional replacement is permitted under State law and the STD elects to provide it.
(2) The property in question is in public ownership and use.
(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.
(4) The State has informed the agency owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.
(5) The FHWA concurs in the STD determination that functional replacement is in the public interest.
(6) The real property is not owned by a utility or railroad.

(c) Federal land transfers. Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in 23 CFR 710.601 et seq.

(d) Limits upon participation. Federal-aid participation in the costs of functional replacement are limited to costs which are actually incurred in the replacement of the acquired land and/or facility and are:

(1) Costs for facilities which do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) Procedures. When a State determines that payments providing for functional replacement of public facilities are allowable under State law, the State will incorporate within the State's ROW operating manual full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation enhancements.

(a) General. Section 133(b) (8) of title 23, U.S.C., authorizes the expenditure of surface transportation funds for transportation enhancement activities (TEA). Transportation enhancement activities which involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the Code of Federal Regulations (CFR), except as specified in paragraph (b)(3) of this section.

(b) Requirements.

(1) Displacements for TEA are subject to the Uniform Act.

(2) Acquisitions for TEA are subject to the Uniform Act except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) Entities acquiring real property for TEA who lack the power of eminent domain may comply with the Uniform Act by meeting the limited requirements under 49 CFR 24.101(a)(2).

(4) The requirements of the Uniform Act do not apply when real property acquired for a TEA was purchased from a third party by a qualified conservation organization, and

(i) The conservation organization is not acting on behalf of the agency receiving TEA or other Federal-aid funds, and

(ii) There was no Federal approval of property acquisition prior to the involvement of the conservation organization. ["Federal approval of property acquisition" means the date of the approval of the environmental document or project authorization/agreement, whichever is earlier. "Involvement of the conservation organization" means the date the organization makes a legally binding offer to acquire a real property interest, including an option to purchase, in the property.]

(5) When a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds on behalf of an agency with eminent domain authority, the requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) Property management. Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23, U.S.C.

§ 710.513 Environmental mitigation.

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

Subpart F— Federal Assistance Programs

§ 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, U.S.C., and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, U.S.C., provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal-aid project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a) (2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, et seq.)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual cleaning, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under these provisions, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

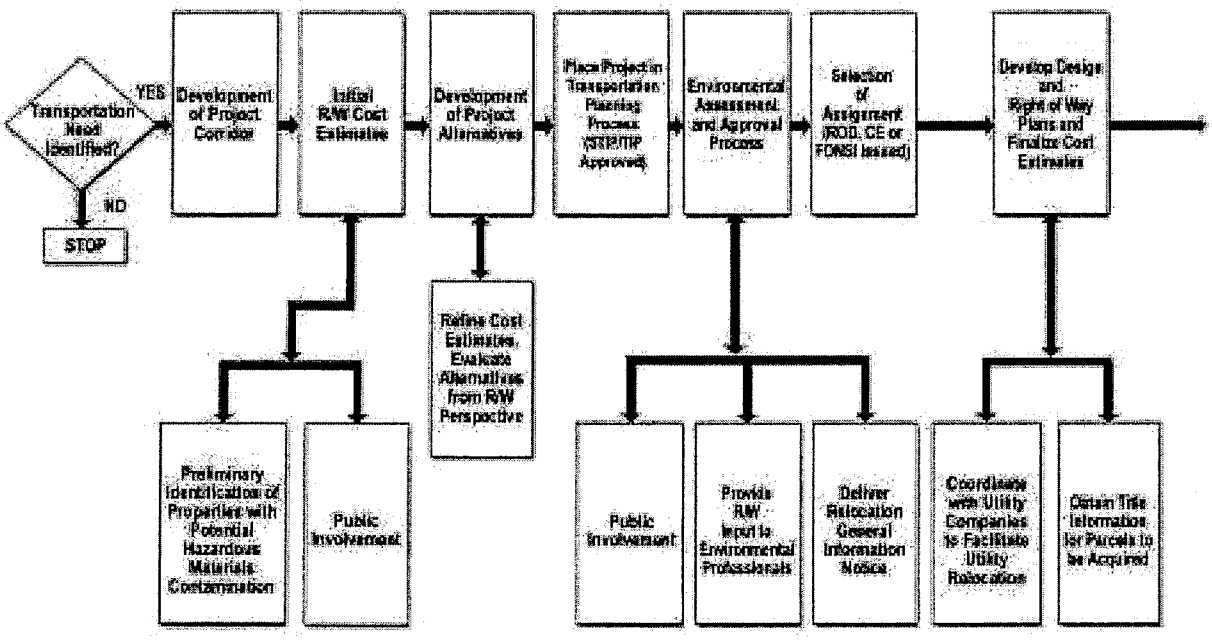
(4) Abide by any conditions which may set forth in the deed; and

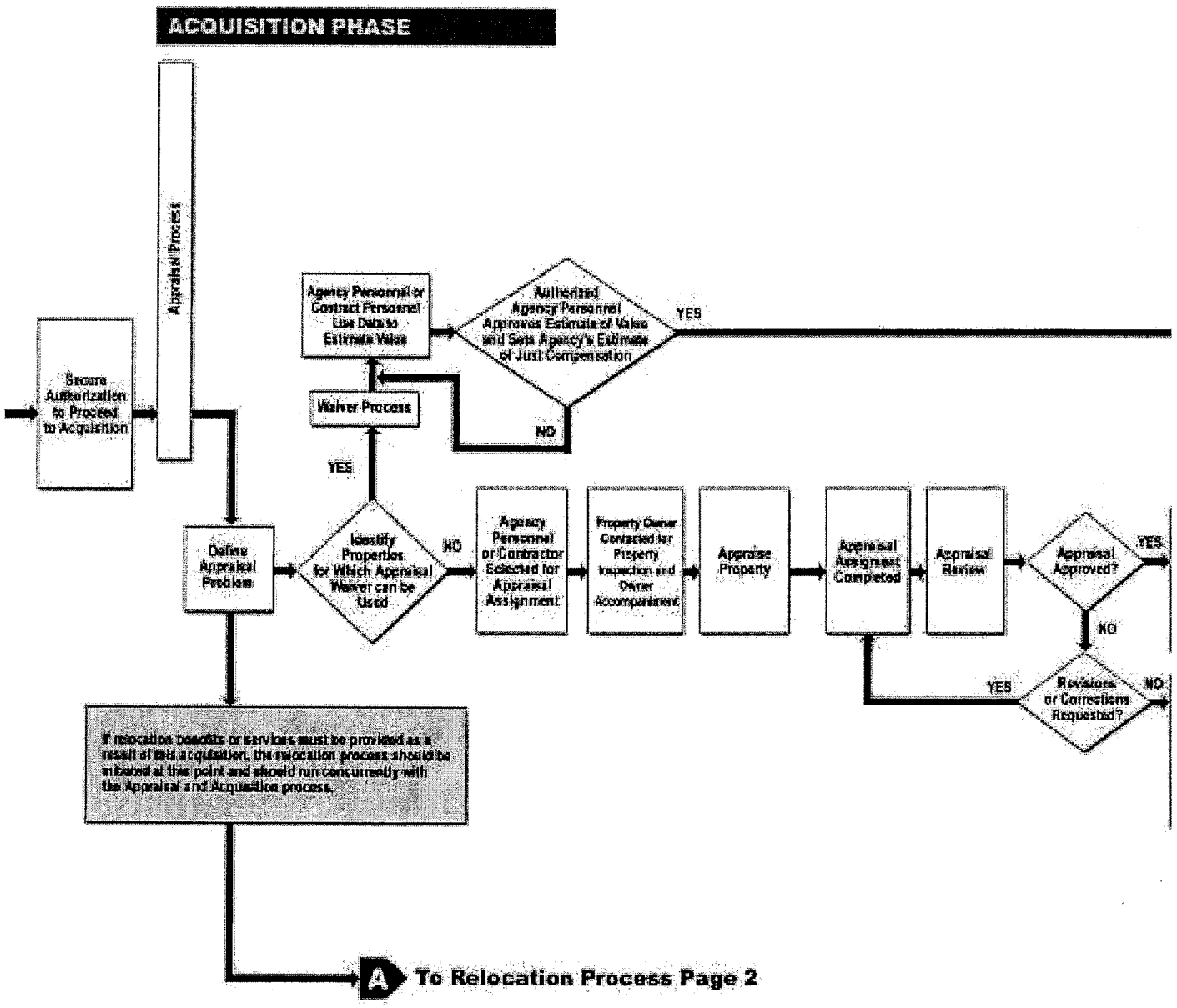
(5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.

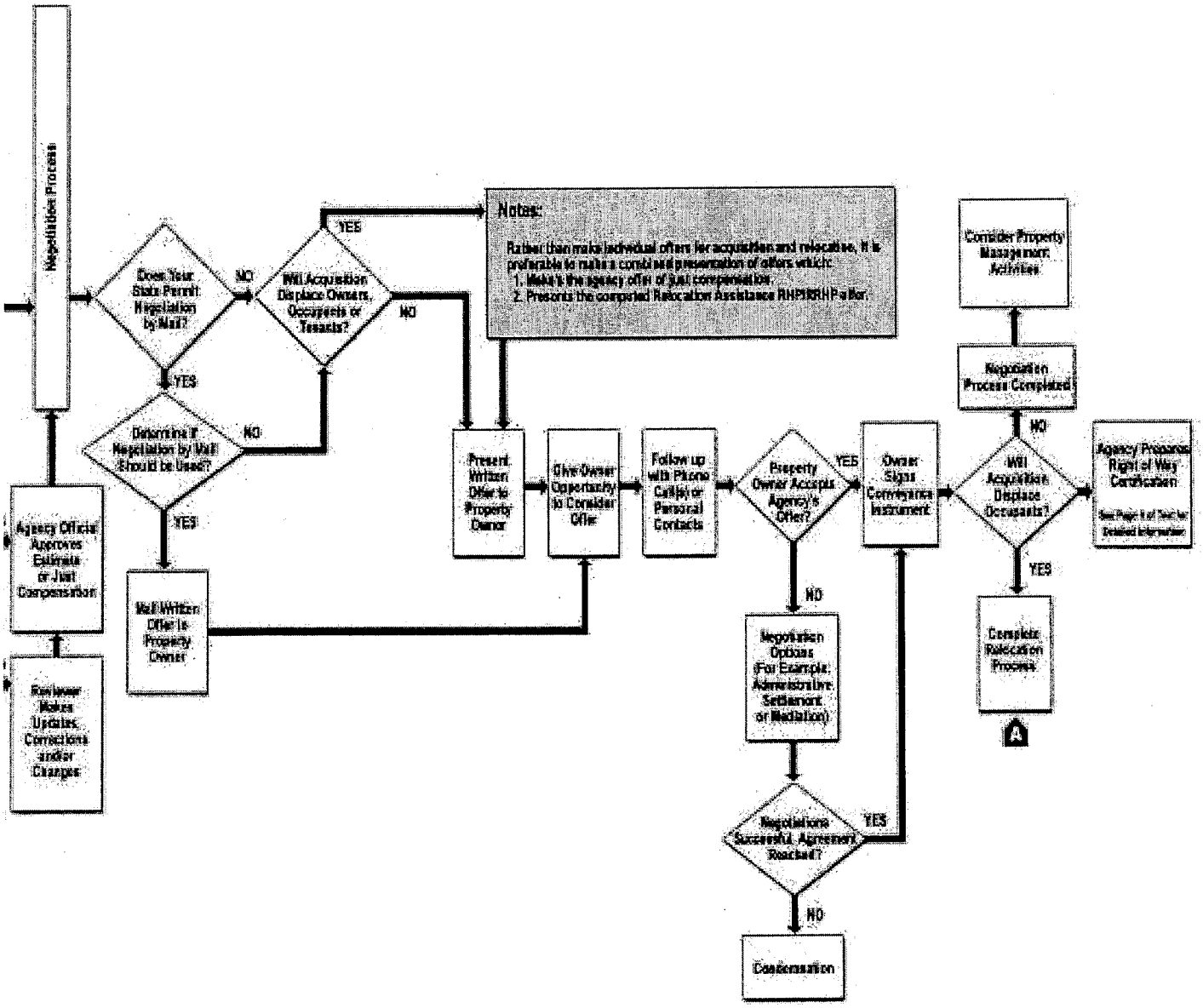
(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

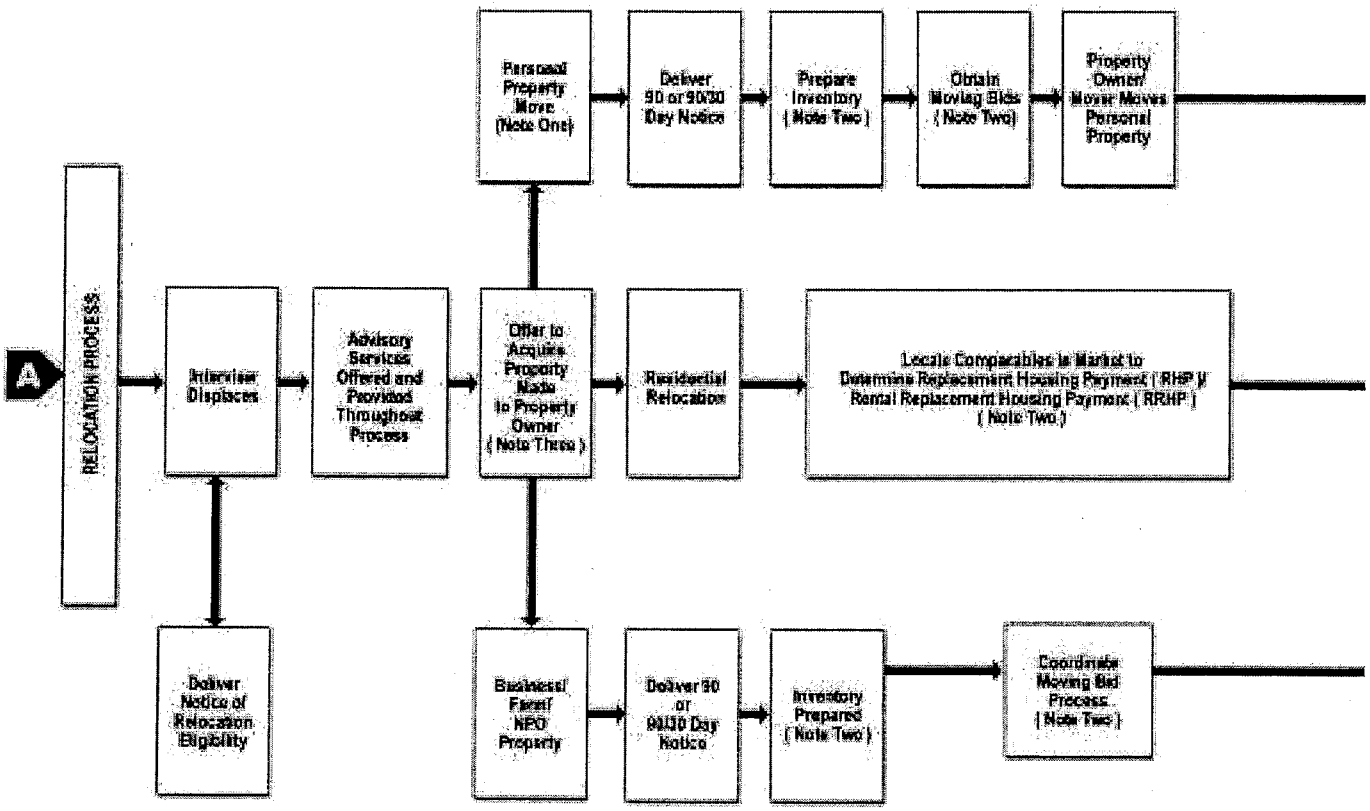
Issued on: December 13, 1999
Kenneth R. Wykle,
Federal Highway Administrator
[FR Doc. 99-32908 Filed 12-20-99; 8:45 am]

PROJECT DEVELOPMENT PHASE




ACQUISITION PHASE
Appraisal Process
Secure Authorization to Proceed to Acquisition
Define Appraisal Problem
Identify Properties for Which Appraisal Waiver can be Used
YES
NO
Waiver Process
Agency Personnel or Contract Personnel Use Data to Estimate Value
Authorized Agency Personnel Approves Estimate of Value and Sets Agency's Estimate of Just Compensation
YES
NO
Agency Personnel or Contractor Selected for Appraisal Assignment
Property Owner Contacted for Property Inspection and Owner Accompaniment
Appraise Property
Appraisal Assignment Completed
Appraisal Review
Appraisal Approved?
YES
NO
Revisions or Corrections Requested?
YES
NO
If relocation benefits or services must be provided as a result of this acquisition, the relocation process should be initiated at this point and should run concurrently with the Appraisal and Acquisition process.
A
To Relocation Process Page 2


Negotiation Process
Does Your State Permit Negotiation by Mail?
NO
YES
Will Acquisition Displace Owners, Occupants or Tenants?
YES
NO
Notes:
Rather than make individual offers for acquisition and relocation, it is preferable to make a combined presentation of offers which:
1. Makes the agency offer of just compensation.
2. Presents the computed Relocation Assistance RHP/RHP offer.
Determine if Negotiation by Mail Should be Used?
NO
YES
Present Written Offer to Property Owner
Give Owner Opportunity to Consider Offer
Follow up with Phone Call(s) or Personal Contacts
Property Owner Accepts Agency's Offer?
YES
NO
Owner Signs Conveyance Instrument
Will Acquisition Displace Occupants?
NO
YES
Agency Prepares Right of Way Certification
Negotiation Process Completed
Consider Property Management Activities
Complete Relocation Process
A
Agency Official Approves Estimate of Just Compensation
Mail Written Offer to Property Owner
Reviewer Makes Updates, Corrections and/or Changes
Negotiation Options (For Example: Administrative Settlement or Mediation)
Negotiations Successful, Agreement Reached?
YES
NO
Condemnation



NOTES:

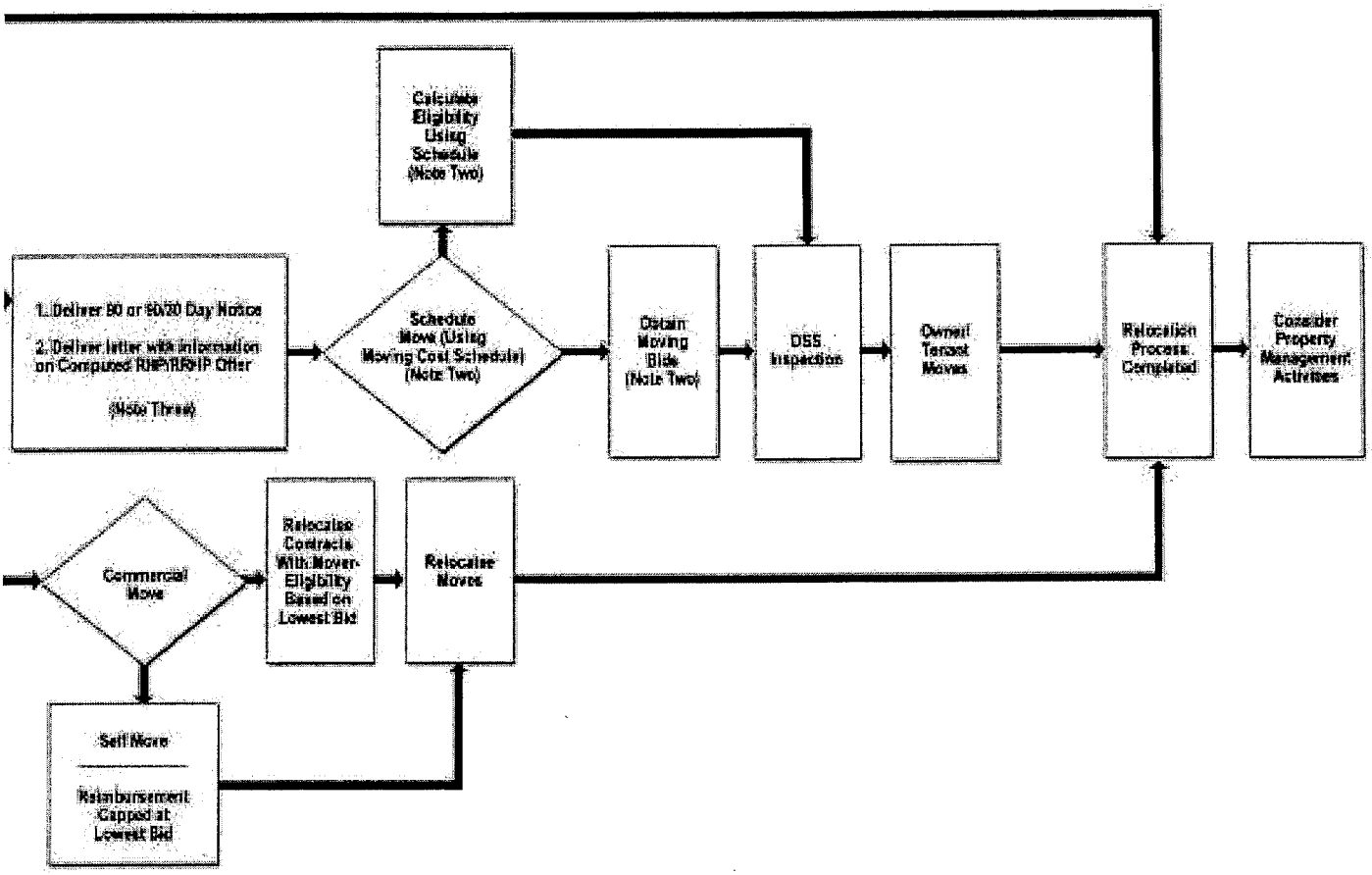
Note One - This type of move involves moving only residential personal property from the area that was acquired (right of way). For example a shed or hay stack is moved from the (right of way) onto the property owner's remainder property.

Note Two - In order to ensure a timely relocation these activities should be started immediately after interviewing displacee.

Note Three - Rather than make individual offers for acquisition and relocation, it is preferable to make a combined presentation of offers which:

1. Makes the agency's offer of just compensation.

2. Presents the computed Relocation Assistance RHP/RRHP offer.


Calculate Eligibility Using Schedule (Note Two)
1. Deliver 90 or 60/30 Day Notice
2. Deliver letter with information on Computed RHP/RPIP Offer
(Note Three)
Schedule Move (Using Moving Cost Schedule) (Note Two)
Obtain Moving Bids (Note Two)
DSS Inspection
Owner/ Tenant Moves
Relocation Process Completed
Consider Property Management Activities
Commercial Move
Relocation Contracts With Mover-Eligibility Based on Lowest Bid
Relocation Moves
Self Move
Reimbursement Capped at Lowest Bid